United States Court of Appeals

for the Second Circuit

APPENDIX

77-7235

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PLS

In The

United States Court of Appeals

For The Second Circuit

FIMEX CORP.,
Plaintiff-Appellant,

vs.

BARMATIC PRODUCTS CO.,
Defendant-Appellee.

UNITED STATES COURT OF APPEALS
FILED
JUL 13 1977
DANIEL FUSARO, CLERK
SECOND CIRCUIT

ORIGINAL

JOINT APPENDIX

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76C 2021 FIMEX CORP.M vs BARMATIC PRODUCTS

DATE	NR.	PROCEEDINGS
11-4-76		Complaint filed. Summons issued. (1)
12-2-76		Summons ret and filed/executed. (2)
12-7-76		BY PLATT, J.- order dtd 12-6-76 extending deft's time to answer the complaint to 12-20-76 filed. (3)
1/4/77		Amended complaint of pltff and pltff demands trial by jury filed. (4)
1-6-77		Deft's supplement to motions for summary judgment etc filed. (5)
1-6-77		Notice to depose 1-12-77 filed.(FimeX Corporation) (6)
1/11/77		Affidavit of Isaac L. Cohen filed re:in opposition to the deft's motio to dismiss the pltff's complaint and/or for summary judgement. (7)
1/11/77		Pltff's memo in opposition to the deft's motion to dismiss filed. (8)
1-13-77		Deft's repoly to pltff's opposition to deft's motions filed. (9)
1/14/77		Before Platt, J--case called-deft's motion for Summary Judgement adjd to 1/28/77 by which time 9 (g) statements must be filed.
1-18-77		Memo in support of motion for summary judgment filed. (10)
1-21-77		Deft's statement pursuant to Rule 9 filed. (11)
1/27/77		Pltff's Statement pursuant to local rule 9 (g) in opposition to def's Motion for summary judgment filed. (12
1-28-77		Before PLATT, J. - Case called. Deft's motion for summary judgment argued. Decision reserved. Cohen deposition to be taken 2-2-77. Recall 2-25-77 at 11 A.M.
2/4/77		Before PLATT, J. Case called. ADJ. to 2/25/77 for argument on motion for summary judgment.
2/22/77		By Platt, J Order dtd 2/19/77 filed re protective ordersealing affidav of Allan J. Korecky. (13)
2-24-77		Deft's supplemental reply to pltff's opposition to deft's motions filed. (14)
2-24-77		Affidavit of Allan J. Korecky filed re: deft. company (15)
2-24-77		Copy of EBT transcript of FIMEX CORP. by Isaac L. Cohen filed. (dtd. 2-2-77). (16)
2-25-77		Exhibits to deposition of Isaac L. Cohen filed. (17
2/28/77		Affidavit of Allan J. Korecky-ordered sealed by the court in the vaul
2-25-77		Before PLATT,J Case called. Motion for summary judgment argued. Decision reserved.
3/4/77		Def's Reply to pltff's supplemental affidavits filed. (19)
3/9/77		Sten's transcript dtd 2/25/77 filed. (20
4/15/77		By Platt, J Order dtd 4/14/77 filed re deft's motion for summary judgment is granted with costs etc. (21)
4-15-77		JUDGMENT dtd 4-14-77 that the deft's motion for summary judgment is granted. (22)
5/13/77		Notice of appeal filed by pltff.Copy mailed to C. of A. & BARNES, RICHARDSON & COLBURN. 475 Pk. Ave. NY, NY. (23)
5-26-77		Civil appeal scheduling order ret 6-13-77 filed, mg (24
5/31/77		SUPPLEMENTAL AFFIDAVIT(in opposition to the def's motion for summary judgment) of DAVID JAROSLAWICZ (atty. for pltff.) filed. (25)
5/31/77		Def's motions for summary judgment or inthe alternative to dismiss the complaint under Rule 12(b)(6) filed. (26)
6-3-77		Above record certified & mailed. to C of A. --- 1

COMPLAINT
(Filed November 4, 1976)
(pp.2a-5a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

FIMEX CORP.,	:	
Plaintiff,	:	76 Civ.
-against-	:	COMPLAINT
BARMATIC PRODUCTS CO.,	:	Plaintiff Demands Trial By Jury
Defendant.	:	

----------X

Plaintiff, by its attorneys, Julien & Schlesinger, P.C., complaining of the defendant herein, alleges as follows:

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 15 U.S.C. 15 and the rules of pendent jurisdiction.

2. Venue is properly situated in the Eastern District of New York since the plaintiff's principal place of business is within the Eastern District of New York, the defendant has transacted business within the Eastern District of New York and many of the acts complained of occurred within the Eastern District of New York.

The Parties

3. The plaintiff Fimex Corp. ("Fimex"), is a New York corporation with its principal place of business at 135 Eileen Way, Syosset, New York 11791.

4. Upon information and belief, at all times hereinafter mentioned, the defendant Barmatic Products Co. ("Barmatic"), is an Ohio corporation with its principal place of business in the State of Ohio.

As and For a First Claim for Relief

5. At all times hereinafter mentioned, the plaintiff was engaged in the business of distributing automobile parts.

6. At all times hereinafter mentioned, the defendant was in the business of manufacturing and distributing automobile parts particularly tie rods and other parts used in automobiles an other motor vehicles.

7. At all times hereinafter mentioned, the plaintiff ha purchased automobile parts from the defendant from approximately 1960 to date.

8. That during that period the defendant failed to advise the plaintiff and fraudulently concealed from the plaintiff that the defendant was charging the plaintiff a different and higher price than it was charging other customers purchasing in the same manner and for the same purposes as the plaintiff.

9. That the defendant has sold its products in interstate commerce at discriminatory prices and continues to do so.

10. That the motor vehicle parts industry is a highly competitive one and the higher prices charged by the defendant to the plaintiff had made it difficult for the plaintiff to compete in the sale of the defendant's auto parts and has caused substanti injury to the plaintiff's position as a competitor in the sale and distribution of automobile parts.

11. That the defendant's discrimination in prices between customers is not cost justified between the plaintiff and other customers.

12. That the defendant's actions as aforesaid has caused the plaintiff to be injured in that it was unable to compete in the sale of automobile parts, losing sales of the defendant's products, losing profits on its sales of the defendant's products, losing customers because of its inability to compete in prices with regard to the defendant's products, and that the plaintiff was otherwise damaged.

13. That the defendant's actions as aforesaid are in violation of the Robinson-Patman Act, 15 U.S.C. 13(a).

As and For a Second Claim for Relief

14. Plaintiff repeats, reiterates and realleges each and every allegation contained in the paragraphs of this complaint numbered "1" through and inclusive of "13" with the same force and effect as though more fully set forth herein at length.

15. That the defendant has engaged in actions in violation of the antitrust laws as aforesaid. There is a substantial danger that the defendant will continue to violate the antitrust laws unless it is enjoined from doing so by this Court.

16. That if the defendant continues to violate the antitrust laws the plaintiff will continue to suffer damages by reason of the defendant's actions.

17. The plaintiff requests that the defendant be enjoined from any further violations of the antitrust laws pursuant to 15 U.S.C. 26.

Wherefore, the plaintiff demands judgment against the defendant as follows:

(a) That the plaintiff be awarded treble damages plus the costs of this action including a reasonable attorneys' fee for all of the damages it has sustained by reason of the defendant's violations of the antitrust laws;

(b) That the defendant be enjoined from any further violations of the antitrust laws pursuant to 15 U.S.C. 26; and

(c) That the plaintiff be granted such other, further and different relief as to the Court may seem just and proper.

JULIEN & SCHLESINGER, P.C.

By _____
Attorneys for Plaintiff
2 Lafayette Street
New York, New York 10007
(212) 962-8020

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

FIMEX CORP.,

Plaintiff,

- against -

BARMATIC PRODUCTS CO.,

Defendant.

----------x

76 Civ. 2021

AMENDED COMPLAINT

Plaintiff demands Trial By Jury

Plaintiff, by its attorneys, JULIEN & SCHLESINGER, P.C., complaining of the defendant herein, alleges as follows:

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 15 U.S.C. 15 and the rules of pendent jurisdiction.

2. Venue is properly situated in the Eastern District of New York since the plaintiff's principal place of business is within the Eastern District of New York, the defendant has transacted business within the Eastern District of New York and many of the acts complained of occurred within the Eastern District of New York.

The Parties

3. The plaintiff Fimex Corp., ("Fimex"), is a New York corporation with its principal place of business at 135 Eileen Way, Syosset, New York 11791.

4. Upon information and belief, at all times hereinafter mentioned, the defendant Barmatic Products Co., ("Barmatic"), is an Ohio corporation with its principal place of business in the State of Ohio.

As and For a First Claim for Relief

5. At all times hereinafter mentioned, the plaintiff was engaged in the business of distributing automobile parts in the United States and abroad.

6. At all times hereinafter mentioned, the defendant was in the business of manufacturing and distributing automobile parts particularly tie rods and other parts used in automobiles and other motor vehicles.

7. At all times hereinafter mentioned, the plaintiff has purchased automobile parts from the defendant from approximately 1960 to date.

8. That during that period the defendant failed to advise the plaintiff and fraudulently concealed from the plaintiff that the defendant was charging the plaintiff a different and higher price than it was charging other customers purchasing the same product of like grade and quality at the same time, in the same manner and for the same purpose as the plaintiff.

9. That the defendant has sold its products of the same grade and quality to different purchasers, one of whom was the plaintiff, in interstate commerce at discriminatory prices and continues to do so.

10. Plaintiff purchased products from the defendant intending to resell them both in the United States and abroad.

11. That the motor vehicle parts industry is a highly competitive one and the higher prices charged by the defendant to the plaintiff had made it difficult for the plaintiff to compete in the sale of the defendant's auto parts and has caused

substantial injury to the plaintiff's position as a competitor in the sale and distribution of automobile parts.

12. That the defendant's actions, as aforesaid, have been to substantially lessen competition in the sale of its products and to injure, destroy and prevent competition by the plaintiff with those persons who were and are receiving the benefits of the discriminatory prices charged by the defendant.

13. That the defendant's discrimination in prices between customers is not cost justified between the plaintiff and other customers.

14. That the plaintiff did not have knowledge that the defendant was charging him a discriminatory price. That the defendant concealed its discriminatory pricing actions by creating two separate price lists, only one of which was shown to the plaintiff and that the plaintiff, by the exercise of due diligence, could not have uncovered the second price list prior to the time that this information became available to it.

15. That the defendant's actions, as aforesaid, has caused the plaintiff to be injured in that it was unable to compete in the sale of automobile parts, losing sales of the defendant's products, losing profits on its sales of the defendant's products, losing customers because of its inability to compete in prices with regard to the defendant's products, and that the plaintiff was otherwise damaged.

16. That the defendant's actions, as aforesaid, are in violation of the Robinson-Patman Act, 15 U.S.C. 13(a).

As and For a Second Claim for Relief

17. Plaintiff repeats, reiterates and realleges each and every allegation contained in the paragraphs of this complaint numbered "1" through and inclusive of "16", with the same force and effect as though more fully set forth herein at length.

18. That the defendant has engaged in actions in violation of the antitrust laws, as aforesaid. There is a substantial danger that the defendant will continue to violate the antitrust laws unless it is enjoined from doing so by this Court.

19. That if the defendant continues to violate the antitrust laws, the plaintiff will continue to suffer damages by reason of the defendant's actions.

20. The plaintiff requests that the defendant be enjoined from any further violations of the antitrust laws pursuant to 15 U.S.C. 26.

WHEREFORE, the plaintiff demands judgment against the defendant as follows:

a) That the plaintiff be awarded treble damages plus the costs of this action, including a reaonable attorneys' fee for all of the damages it has sustained by reason of the defendant's violations of the antitrust laws;

b) That the defendant be enjoined from any further violations of the antitrust laws pursuant to 15 U.S.C. 26; and

c) That the plaintiff be granted such other, further and different relief as to the Court may seem just and prope

JULIEN & SCHLESINGER, P.C.
BY: _____
Attorneys for Plaintiff
2 Lafayette Street
New York, New York 10007
(212) 962-8020

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

FIMEX CORP., Plaintiff, -against- BARMATIC PRODUCTS CO., Defendant.	76 CIV 2021

NOTICE OF MOTIONS

To: David Jaroslawicz, Esquire
Julien & Schlesinger
2 Lafayette Street
New York, New York
Attorney for Plaintiff

Please take notice, that the undersigned will bring the Defendant's Motions For Summary Judgment Or, In the Alternative, To Dismiss the Complaint Under Rule 12(b)(6) on for a hearing before this Court at Courtroom 7, Fourth Floor of the United States Court House, Cadman Plaza East, Brooklyn, New York, on the 7th day of January, 1977, at ~~2:00~~ 11:00 in the afternoon of that day or as soon thereafter as counsel can be heard.

Arent, Fox, Kintner, Plotkin & Kahn
1815 H Street, N.W.
Washington, D.C. 20006
Tel. (202) 857-6095

By Salvatore A. Romano
Salvatore A. Romano

Barnes, Richardson & Colburn
475 Park Avenue South
New York, New Yrok 10016
Tel. (212) 725-0200

By _____
Rufus E. Jarman, Jr.

Attorneys for the Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

FIMEX CORP., Plaintiff, -against- BARMATIC PRODUCTS CO., Defendant.	76 CIV 2021

DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, TO DISMISS THE COMPLAINT UNDER RULE 12(b)(6)

1. Pursuant to Rule 56 of the Federal Rules of Civil Procedure, the defendant, Barmatic Products Company, respectfully moves this Court for entry of summary judgment against the plaintiff on the ground that Section 2(a) of the Robinson-Patman Act amendments to the Clayton Antitrust Act, 15 U.S.C. § 13(a), does not apply to the sales of products by defendant to plaintiff, since they were not commodities sold for use, consumption or resale within the United States or any place under the jurisdiction of the United States, as required by Section 2(a). As more particularly appears from the Affidavit of Allan J. Korecky, President of Barmatic Products Company, with attached Exhibits, attached hereto as Exhibit A, there is no genuine issue of material fact that plaintiff is and has been engaged solely in export trade and that the products it purchased from defendant were resold in foreign commerce. Therefore, defendant is entitled to summary judgment against plaintiff.

2. In the event the Court denies, in whole or in part, the foregoing motion for summary judgment, defendant respectfully

moves for an order dismissing the complaint for failure to state a claim upon which relief can be granted. Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the defendant moves for an order dismissing the complaint on the grounds: (1) that it fails to state a claim upon which relief can be granted under Section 2(a) of the Robinson-Patman Act amendments to the Clayton Antitrust Act, 15 U.S.C. § 13(a), and (2) to the extent the complaint purports or attempts to allege any claim under Section 2(a) prior to November 2, 1972, any such claim is barred by the applicable four-year statute of limitations under Section 4b of the Clayton Antitrust Act, 15 U.S.C. § 15b.

3. The grounds for the defendant's motions are more fully set forth and discussed in the Supporting Memorandum.

Respectfully submitted,

Arent, Fox, Kintner, Plotkin & Kahn
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Washington, D.C. 20006
Tel. (202) 857-6095

By Salvatore A. Romano
Salvatore A. Romano

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475 Park Avenue South
New York, New York 10016
Tel. (212) 725-0200

By Rufus E. Jarman Jr
Rufus E. Jarman, Jr.

Attorneys for the Defendant

AFFIDAVIT OF ALLAN J. KORECKY DATED DECEMBER 13, 1976 IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS AND REPRESENTATIVE EXHIBITS ANNEXED THERETO (pp. 13a-18a)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

FIMEX CORP., Plaintiff, -against- BARMATIC PRODUCTS CO., Defendant.	76 CIV 2021

AFFIDAVIT OF ALLAN J. KORECKY

ALLAN J. KORECKY, being duly sworn, deposes and states as follows:

1. I am the President of Barmatic Products Company, the defendant in the above-entitled matter. In such capacity, I am and have been thoroughly familiar with the business activities of the company.

2. Barmatic Products Company (Barmatic) is a corporation, incorporated under the laws of the State of Ohio, with its principal and only place of business located at 13605 Union Avenue, Cleveland, Ohio. Barmatic is a small company which is engaged in the manufacture and distribution of automobile and truck steering parts.

3. Over the years Barmatic has sold products it manufactures to Fimex Corporation. Based on my knowledge and

EXHIBIT A

experience in the trade and my knowledge of and experience with Fimex Corporation, Fimex is and has been engaged solely in the export distribution of automotive products to customers located in foreign destinations, with its principal market in the country of Turkey.

4. I have reviewed the company's records relating to its sales of products to Fimex Corporation covering the period 1968 to date. The company does not have records which reflect the sales by the company to Fimex from 1960 to 1967. During the period 1968 to date, Barmatic's sales of products to Fimex averaged approximately $14,500 per annum in dollar volume.

5. I have reviewed the company's records of purchase orders and certificates of export which were received by Barmatic from Fimex Corporation in the normal course of business during the period 1968 to date and which are maintained by Barmatic as business records kept in the regular course of business. A substantial portion of all the purchases made by Fimex from Barmatic involved truck steering products which are exempt from the Federal Excise Tax if the products purchased are for export to foreign destinations. Attached as Exhibit 1 are copies of all the certificates of export, together with copies of the purchase orders, submitted to Barmatic by Fimex Corporation during the period 1968 to date. The certificates of export indicate that the products purchased by Fimex were exported

BEST COPY AVAILABLE

and shipped to foreign destinations pursuant to sections 316.25 and 316.26 of Regulation 46 of the Federal Excise Tax Regulations. Attached as Exhibit 2 are copies of the purchase orders submitted by Fimex to Barmatic during the period 1960 to date, which relate to the sale of automobile steering products and which were not covered by the Federal Excise Tax. All but four of these purchase orders reflect the fact that the equipment purchased by Fimex was exported or shipped to foreign destinations, primarily to the country of Turkey. Three of the remaining four purchase orders indicate that the products were boxed in wooden cartons or crates which are export cartons, or required the affixation of labels, at the request of Fimex. During the period 1960 through and including 1973 only Barmatic's export customers provided Barmatic with labels to be affixed to cartons for products sold to them by Barmatic. Fimex had supplied Barmatic with labels for the products it purchased from the company during this period.

6. During the period 1960 to 1973, only export customers of Barmatic provided the company with packaging materials to pack the products sold to these exporters. Fimex did provide these packaging materials to Barmatic to package the products sold to Fimex from 1960 to 1973. In 1973, Barmatic stopped performing the packaging functions for its export customers.

7. Based upon my knowledge of Fimex and my review of Exhibits 1 and 2, Fimex exported the products it purchased from Barmatic to foreign destinations, principally the country of Turkey.

DATE: This 13th day of December 1976.

Allan J. Koreckij

Allan J. Koreckij

County of Cuyahoga)
) SS:
State of Ohio)

Subscribed and sworn to before me this 13th day of December, 1976.

David F. Dolch

Notary Public

(Notorial Seal) My Commission Expires: April 4, 1979

CABLE ADDRESS
FIMEXFL NEW YORK

FIMEX CORP.
135 EILEEN WAY
SYOSSET (L. I.) N. Y. - 11791

TELEPHONES
(516) - 364 - 2510
(516) - 364 - 2511

17a

BARMATIC PRODUCTS CO.
Cleveland, Ohio, 44120

July 19,1976

Gentlemen:

Pursuant to Section 316.25 and 316.26 of Regulation 46, relating to Excise tax, we hereby certify:

1 (1) That all articles and merchandise on this order are for export in due course, prior to use, resale or further manufacture.

2 (2) That we have in our possession either copy of export bill of lading, or a certificate by the agent or transport representative of the export carrier showing actual exportation, or a certificate of lading Customs Officer or a sworn statement from the purchaser of export that he has in his possession evidence of exportation in due course.

(3) That the above evidence is available for inspection by Government officers.

The above covers our Order No.	Your Inv. No.
5937	9058
5957	9057
5964	9181

FIMEX CORP.

Exhibit 1
(Representative Sample)

FIMEX CORP.
117 SWALM STREET
WESTBURY (L. I.)-N. Y.-11590
(516)-333-2720
(516)-333-2721

November 7, 1968

Barmatic Products Company
13605 Union Avenue
Cleveland, Ohio 44120

Re: 4880

Dear Mr. Korecky:

This will confirm our order for ball joints 10086.

We have now received your confirmation that you have 441 pieces.

Kindly pack them in individual neutral cartons, to which you affix our SPADE labels, to be stamped with the number 10086. Please advise if you have enough labels on hand.

Boxes: Please pack in wooden cases.

Marks: FIMEX
G U R
ISTANBUL
4880/1 & up

Kindly advise when ready.

Very truly yours,

FIMEX CORP.

HC;fxm

November 8, 1968

Gentlemen:

Your order is packed and ready for shipment. Please advise shipping instructions.

EXHIBIT 2
(Representative Sample)

BARMATIC PRODUCTS COMPANY

DEFENDANT'S MEMORANDUM IN SUPPORT OF THE MOTION
(Filed January 18, 1977.) (pp. 19a-30a)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

FIMEX CORP., Plaintiff, -against- BARMATIC PRODUCTS CO., Defendant.	76 CIV 2021

MEMORANDUM IN SUPPORT OF MOTIONS FOR
SUMMARY JUDGMENT OR,
IN THE ALTERNATIVE, TO DISMISS THE COMPLAINT

Barmatic Products Company (hereinafter "Barmatic" or "defendant"), moves for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, or, in the alternative, moves to dismiss the complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The following sets forth the statement of facts, relevant statutes and authorities in support of these motions.

STATEMENT OF FACTS

This suit alleges that the defendant has violated Section 2(a) of the Robinson-Patman Act amendments to the Clayton Antitrust Act, 15 U.S.C. § 13(a) (Compl. ¶ 13). Plaintiff asserts that the defendant charged "plaintiff a different and higher price than it was charging other customers purchasing in the same manner and for the same purposes as the plaintiff." (Compl. ¶ 8). Plaintiff seeks treble damages and injunctive relief.

Totally absent from the complaint is any allegation that the products purchased by plaintiff from defendant were "for use, consumption, or resale within the United States" or any place under the jurisdiction of the United States. Without this threshold jurisdictional element of a Section 2(a) violation, the complaint is fatally defective. Moreover, as the affidavit of Allan J. Korecky, President of Barmatic, makes clear, the plaintiff is and has been engaged solely in the export distribution of automotive products to foreign destinations, with its principal market in the country of Turkey (Exhibit A).

Barmatic is and has been engaged in the manufacture and distribution of automobile and truck steering parts. Fimex Corporation is and has been engaged solely in the export distribution of these products to customers located in foreign destinations (Affidavit of A. J. Korecky, Exhibit A at ¶¶ 2-3, hereinafter cited as Exhibit A).

During the period for which Barmatic has business records of its transactions with Fimex Corporation, 1968 to date, the defendant's sales of truck and automobile steering parts to plaintiff averaged approximately $14,500 per year in dollar volume (Exhibit A at ¶ 4). Although truck steering parts are subject to the Federal Excise Tax, 16 U.S.C. § 4061(b)(1), the sales of these products were exempt since Fimex exported these products to foreign destinations and provided proof of such export to Barmatic in the form of certificates of export (Exhibit 1 attached to Exhibit A). Indeed, as required by Federal Excise Tax Regulations, Fimex submitted certificates

of export under Sections 316.25 and 316.26 of Federal Excise Tax Regulation 46 for all truck steering parts it purchased from defendant during the period 1968 to date (Exhibit 1 attached to Exhibit A). Section 316.25 of Regulation 46 covers the application of the exemption to exports to foreign destinations and Section 316.26 provides for the submission to the manufacturer of proof of export.

Although automobile steering parts are not subject to any Federal Excise Tax, 26 U.S.C. § 4061(b)(2), and therefore no certificates of export were required, Exhibit 2 reflects the fact that Fimex sold the automobile steering parts that it purchased from Barmatic during the period 1968 to date, to customers located in foreign destinations. Indeed, Exhibits 1 and 2 reflect the fact that the truck and automobile steering products purchased from Barmatic by Fimex were sold primarily to customers located in Turkey.

Although the defendant's business records do not go back to 1960, during the period 1960 to 1973 Barmatic packaged and labeled the products it sold only for its export customers. During this period Barmatic performed these functions for Fimex, who supplied Barmatic with the packaging and labels. In 1973, Barmatic ceased performing these functions for its export customers.

In short, there is no genuine issue of material fact that Fimex Corporation is and has been engaged solely in exporting the products it purchased from defendant to customers in foreign commerce, principally in the country of Turkey. Consequently, Section 2(a) of the Robinson-Patman Act amendments to the Clayton Act does not apply and defendant is entitled to summary judgment.

Ostensible in their omission from the allegations in the complaint are critical jurisdictional elements of a violation of Section 2(a) of the Robinson-Patman Act. Totally absent from the complaint are the following jurisdictional elements: (1) contemporaneous sales to two different competing purchasers; (2) of commodities that are of like grade and quality; (3) in interstate commerce; (4) for use, consumption or resale within the United States; and (5) having the requisite adverse effect upon competition. Without allegations of the factual predicate for these jurisdictional elements, the complaint fails to state any basis for relief under Section 2(a) of the Robinson-Patman Act.

The complaint also purports to claim alleged violations of Section 2(a) of the Robinson-Patman Act going back to 1960. To the extent the complaint purports to allege any claim under Section 2(a) prior to November 2, 1972, any such claim is barred by the four-year statute of limitations provided in Section 4b of the Clayton Act, 15 U.S.C. § 15b. The mere bald assertion of fraudulent concealment in paragraph 8 of the complaint is insufficient to trigger this tolling mechanism. There is no allegation (1) that the plaintiff lacked knowledge of the cause of action; (2) that the defendant committed an affirmative act of concealment; and (3) that diligence on the plaintiff's part would not have uncovered the cause of action. In short, the allegation of fraudulent concealment lacks allegation of the three essential predicates for asserting this tolling provision. Therefore the complaint fails to allege any claim to the extent it purports to allege a claim under Section 2(a) prior to November 2, 1972.

RELEVANT STATUTE

Section 2(a) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. § 13(a), provides in pertinent part:

> It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them. . . .

ARGUMENT

We demonstrate below that: (1) defendant is entitled to summary judgment since its sales of products to plaintiff do not come within the coverage of Section 2(a) of the Robinson-Patman Act; or, in the alternative, (2) defendant is entitled to dismissal of the complaint since it fails to state a claim upon which relief can be granted under Section 2(a) of the Robinson-Patman Act and, to the extent it purports or attempts to allege any claim under Section 2(a) prior to November 2, 1972, any such claim is barred by the four-year statute of limitations.

I.

SUMMARY JUDGMENT AGAINST PLAINTIFF SHOULD BE GRANTED ON THE GROUND THAT SECTION 2(A) OF THE ROBINSON-PATMAN ACT DOES NOT APPLY

Plaintiff is and has been engaged solely in the export sale of automotive products. Barmatic's sales of truck and automobile steering products to plaintiff have been for resale to the export trade. Indeed, the affidavit of Allan J. Korecky, President of Barmatic, with attached Exhibits, supports the conclusion that there is no genuine issue of material fact that the products purchased by plaintiff from defendant were resold solely in foreign commerce.

Section 2(a) of the Robinson-Patman Act applies only to commodities "sold for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States. . . ." (15 U.S.C. § 13(a)). This clear and unambiguous jurisdictional element of Section 2(a) was part of the original Section 2 of the Clayton Act, passed in 1914, and was retained in Section 2(a) of the Robinson-Patman Act amendments to the Clayton Act, which were enacted in 1936. The legislative history of original Section 2 of the 1914 Clayton Act and Section 2(a) of the 1936 Robinson-Patman Act amendments clearly reflect the intent of Congress that the original Section 2 and the Section 2(a) amendment were limited to domestic commerce. Indeed, in explaining this language, both the House and Senate Reports relating to original Section 2 noted:

> This section expressly forbids discrimination in price between different dealers of commodities that are sold for use, consumption, or resale within the United States or any place within its jurisdiction. . . . It will be observed that the language used makes this section applicable only to domestic commerce, or, in other words, its application is restricted to commerce carried on in the United States, or in places under the jurisdiction thereof, and has no reference to commodities sold either in this country or abroad which are intended solely for our export trade. H.R. Rep. No. 627, 63d Cong., 2d Sess. 8 (1914); S. Rep. No. 698, 63d Cong., 2d Sess. 3 (1914) (emphasis added).

Both the specific and clear limiting language and the Congressional intent of this language were retained in Section 2(a), which amended original Section 2. S. Rep. No. 1502, 74th Cong., 2d Sess. 5 (1936). Indeed, the 1936 Congressional debates reflect the understanding of Senator Logan who indicated that: "As I recall, the provisions of the bill are confined specifically to the United States and possessions of the United States." 80 Cong. Rec. 6333 (1936). In short, the language of Section 2(a) and the legislative intent supporting that language are clear an unambiguous -- Section 2(a) only applies where products are destined for use, consumption or resale within the United States or any place under its jurisdiction.

In Zenith Radio Corp. v. Matsushita Elect. Indust. Co., 402 F. Supp. 244 (E.D. Pa.), pet. denied, 521 F.2d 1399 (3d Cir. 1975), the Court dismissed a Section 2(a) claim because the commodities involved in the alleged discrimination were not in domestic commerce. The complaint in that case alleged price discrimination in sales by the defendants between their

Japanese customers and American customers. The Court held that both legs of the alleged discrimination must involve commodities that are sold for use, consumption or resale within the United States. Id. at 248. After an extensive analysis of the legislative history of Section 2(a) of the Act and original Section 2 of the Clayton Act, the Court concluded that Section 2(a) did not apply unless the commodities which were the subject of the alleged discrimination were destined for commerce within the United States.

Numerous commentators on the Robinson-Patman Act support the conclusion that Section 2(a) does not apply to price discrimination by a supplier between exporters purchasing for resale in foreign markets. See e.g., C. Austin, Price Discrimination and Related Problems Under the Robinson-Patman Act, 15 at note 21 (1959); F. Rowe, Price Discrimination Under the Robinson-Patman Act, 82 (1962). In short, Section 2(a) does not apply to the sales transactions between plaintiff and defendant since the commodities were for export to foreign destinations. There is no genuine issue of material fact on this point and defendant is entitled to summary judgment.

II.

THE COMPLAINT FAILS TO STATE A CLAIM UNDER RULE 12(b)(6)

Section 2(a) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. § 13(a), prohibits suppliers from discriminating in price between competing purchasers in contemporaneous transactions involving commodities of like grade

and quality, where competitive injury may result. The jurisdictional elements of a Section 2(a) violation are (1) a discrimination in price; (2) in contemporaneous sales to two competing purchasers; (3) of commodities that are of like grade and quality; (4) for use, consumption or resale within the United States; (5) in interstate commerce; and (6) where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition. Ingram v. Phillips Petroleum Co., 259 F. Supp. 176, 180 (D.N.M. 1966); Dean Milk Co. v. FTC, 395 F.2d 696, 700 (7th Cir. 1968).

The allegations of the instant complaint do not provide the notice required under Rule 8 of the Federal Rules of Civil Procedure since the complaint is devoid of the key elements of a Section 2(a) claim. Although the complaint alleges price differences, there is no claim that the alleged discrimination was or is between competing purchasers. FLM Collision Parts, Inc. v. Ford Motor Co., 1976-2 Trade Cases ¶ 61,103 at p. 69,998 (2d Cir. 1976). Nor is there any identification of the customers who are alleged to have been favored. Nor is there any suggestion or clue in the complaint that the purchases by Fimex and the alleged favored customers were contemporaneous transactions or that they involved commodities of like grade and quality. Bruce's Juices, Inc. v. American Can Co., 330 U.S. 743, 756 (1947); Castlegate, Inc. v. National Tea Co., 34 F.R.D. 221, 230 (E.D. Pa. 1964). Also missing from the complaint is any allegation that the subject sales were for use, consumption, or resale within the United States or any place subject to its jurisdiction. Ingram v. Phillips Petroleum Co., supra.

The complaint makes no allegation of any ultimate facts that the alleged price discrimination has had the requisite adverse effect upon competition. Absent from the complaint is any allegation that the effect of the alleged price discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition. This in itself is a fatal defect. Albert H. Cayne Equipment Corp. v. Union Asbestos & Rubber Co., 220 F. Supp. 784, 789 (S.D.N.Y. 1963). Indeed, plaintiff does not even allege that any amount of interstate commerce has been impacted by the alleged discrimination. The significance of the absence of such an allegation is particularly compelling in the instant matter where it is uncontroverted that the plaintiff is engaged in foreign trade and there could be no adverse effect upon interstate commerce within the ambit of Section 2(a) of the Robinson-Patman Act.

The deficiencies in the complaint clearly fall woefully short of the notice requirements of Rule 8 of the Federal Rules of Civil Procedure and the complaint fails to state any claim upon which relief can be granted under Section 2(a) of the Robinson-Patman Act.

To the extent that the complaint purports to allege a Section 2(a) violation relating back to 1960, the complaint fails to state a claim upon which relief can be granted since any such claim prior to November 2, 1972 is barred by the applicable four-year statute of limitations in Section 4b of the Clayton Antitrust Act, 15 U.S.C. 15b. The allegation of fraudulent concealment is nothing more than a bare bones

attempt to assert this tolling mechanism (Compl. ¶ 8). Missing from the complaint are the three basic elements of fraudulent concealment: (1) that plaintiff lacked knowledge of his cause of action, (2) that the defendant committed an affirmative act of concealment; and (3) that diligence on the plaintiff's part would not have uncovered the cause of action. City of Detroit v. Grinnell Corp., 495 F.2d 448, 461 (2d Cir. 1974); Glazer Steel Corp. v. Toyomenka, Inc., 392 F. Supp. 500, 503 (S.D.N.Y. 1974).

In Picoult v. Ralston Purina Co., 1969 Trade Cases ¶ 72,681 (S.D.N.Y. 1969), the court granted partial summary judgment in a Section 2(a) price discrimination case on the failure of the plaintiff to allege and support the essential elements of fraudulent concealment. Indeed, in Moviecolor Limited v. Eastman Kodak Co., 288 F.2d 80, 88 (2d Cir.) cert. denied, 368 U.S. 821 (1961), the Court of Appeals noted:

> Even under modern liberal rules of pleading "justice" still requires that a plaintiff seeking to escape the statute in such a case shall make "distinct averments as to the time when the fraud, mistake, concealment, or misrepresentation was discovered, and what the discovery is, so that the court may clearly see, whether by the exercise of ordinary diligence, the discovery might not have been before made."

In short, the allegation of fraudulent concealment in the complaint is nothing more than a bare bones allegation without the distinctive averments of the essential elements required to trigger its application. Consequently, to the extent that the complaint purports to allege any claim under Section 2(a) of the Robinson-Patman Act prior to November 2, 1972, any such claim is barred by the statute of limitations.

Conclusion

For the foregoing reasons, the court should grant summary judgment against the plaintiff. In the event the court denies, in whole or in part, the motion for summary judgment, the complaint should be dismissed for failing to state a claim upon which relief can be granted under Section 2(a) of the Robinson-Patman Act; and, to the extent, it purports to allege a Section 2(a) claim prior to November 2, 1972, any such claim is barred by the four-year statute of limitations.

Respectfully submitted,

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Tel. (202) 857-6095

By Salvatore A. Romano
Salvatore A. Romano

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By Rufus E. Jarman, Jr.
Rufus E. Jarman, Jr.

Attorneys for the Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

FIMEX CORP., Plaintiff,	:	
-against-	:	76 CIV 2021
BARMATIC PRODUCTS CO., Defendant.	:	

DEFENDANT'S SUPPLEMENT TO MOTIONS FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, TO DISMISS THE COMPLAINT UNDER RULE 12(b)(6)

Comes Now, the defendant, Barmatic Products Company, and respectfully requests this Court to treat Defendant's Motions For Summary Judgment or, in the Alternative, To Dismiss The Complaint Under Rule 12(b)(6) with supporting affidavit, exhibits and memorandum, filed on December 16, 1976, as motions directed to the plaintiff's Amended Complaint filed on January 3, 1977. The following grounds form the bases for defendant's position:

1. Plaintiff's amendment of its Complaint is not substantial and real and constitutes a mere change in form and does not in any way defeat defendant's Motion for Summary Judgment. 6 Moore's Federal Practice at p. 56-173 (1976). The Amended Complaint is still predicated on the alleged violation of Section 2(a) of the Robinson-Patman Act amendments to the Clayton Act, 15 US.C. § 13(a), and the defendant's Motion for Summary Judgment pierced the substance of the plaintiff s alleged claim demonstrating that there was no genuine issue of material fact that plaintiff

resold the products purchased from defendant in foreign commerce. The unverified Amended Complaint creates no genuine issue of material fact and plaintiff is entitled to summary judgment since the products sold to plaintiff by defendant were not commodities sold for use, consumption or resale within the United States or any place under the jurisdiction of the United States as required by Section 2(a).

2. The plaintiff's Amended Complaint does not cure the deficiencies set forth in defendant's Alternative Motion To Dismiss The Complaint Under Rule 12(b)(6) since the amendments merely are changes in form which assert the mere conclusory language of Section 2(a) and there are no allegations of ultimate facts to support the jurisdictional elements of a Section 2(a) claim. Heart Disease Research Foundation v. General Motors Corp., 463 F. 2d 98, 100 (2d Cir. 1972). Significantly, the Amended Complaint does not allege facts or even the conclusory language of Section 2(a) that the products sold to plaintiff by defendant were commodities sold for use, consumption or resale within the United States or any place under its jurisdiction. The omission of even the conclusory language of the statute in this respect is quite telling when plaintiff has now amended its Complaint to allege the other conclusory language of the statute. Nor has the Amended Complaint cured the deficiencies of the allegations of fraudulent concealment since there are no distinct avermonts of facts to support the

essential elements of fraudulent concealment. Without these essential facts there is no way to determine whether due diligence on plaintiff's part would have uncovered the alleged cause of action.

For the reasons set forth in defendant's Motion For Summary Judgment as supplemented herein, the court should grant summary judgment against the plaintiff. In the event the court denies, in whole or in part, the motion for summary judgment, for the reasons set forth in defendant's Motion To Dismiss The Complaint Under Rule 12(b)(6), as supplemented herein, the Amended Complaint should be dismissed for failing to state a claim upon which relief can be granted under Section 2(a) of the Robinson-Patman Act, and to the extent it purports to allege a Section 2(a) claim prior to November 2, 1972, any such claim is barred by the statute of limitations.

Respectfully submitted,

Arent, Fox, Kintner, Plotkin & Kahn
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By Rufus E. Jarman, Jr.
Rufus E. Jarman, Jr.

Attorneys for the Defendant

DEFENDANT'S STATEMENT PURSUANT TO LOCAL RULE 9(g)
(Filed January 21, 1977) (pp. 34a-35a)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

FIMEX CORP.,	:	
Plaintiff,	:	76 CIV 2021
-against-	:	
BARMATIC PRODUCTS CO.,	:	
Defendant.	:	

DEFENDANT'S STATEMENT PURSUANT TO LOCAL RULE 9(g)

Defendant contends that there is no genuine issue to be tried with respect to the following material facts:

1. Barmatic Products Company is a corporation, incorporated under the laws of the State of Ohio, with its principal and only place of business located in Cleveland, Ohio. Barmatic is a company engaged in the manufacture and distribution of truck and automobile steering parts.

2. During the period 1960 to and including 1976, Barmatic sold truck and automobile steering parts to Fimex Corporation. During the period 1968 to and including 1976, Barmatic's sales of products to Fimex averaged approximately $14,500 a year in dollar volume.

3. During the period 1960 to and including 1976, Fimex Corporation consistently advised Barmatic that the products it was purchasing were being resold in export trade to foreign distinations, primarily to the country of Turkey. In addition, during the

period 1960 to and including 1973, Barmatic performed labeling and packaging functions for Fimex, which it performed only for its customers which were engaged in export trade. Subsequently, Barmatic stopped performing these functions for its export customers.

4. During the period 1960 to and including 1976, none of the products sold to Fimex by Barmatic were used, consumed or resold within the United States or any place under its jurisdiction.

Respectfully submitted,

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Tel. (202) 857-6095

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By Rufus E. Jarman, Jr.
Rufus E. Jarman, Jr.

Attorneys for Defendant

PLAINTIFF'S STATEMENT PURSUANT TO LOCAL RULE 9(g)
(Filed January 27, 1977) (pp. 36a-38a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

FIMEX CORP., :

Plaintiff, : Index No. 76 Civ. 2021

-against- :

BARMATIC PRODUCTS CO., :

Defendant. :

----------X

PLAINTIFF'S STATEMENT PURSUANT TO LOCAL RULE 9(g) IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

1. Fimex Corp. ("Fimex") is a New York corporation with its principal place of business in Syosset, New York.

2. Since 1960 and up to and through 1976, Fimex has purchased automobile and truck parts from the defendant Barmatic Products Co. ("Barmatic").

3. Barmatic had two separate price lists, only one of which was shown to Fimex and which prices were much higher than those contained in the price list not shown to Fimex.

4. Barmatic charged Fimex higher prices than it charged other customers at the same time for goods of the same grade and quality.

5. During the period 1960 through 1976, any goods which were purchased by Fimex from Barmatic were shipped from Barmatic to Fimex in Syosset, New York.

6. Some, but not all, of the goods purchased by Fimex from Barmatic were purchased by Fimex for resale to Fimex's

customers located in countries outside of the United States.

7. On occasion Barmatic would label certain goods which Fimex purchased from it with Fimex's labels and then ship those goods to Fimex. Fimex has no knowledge as to which of its customers Barmatic performed labeling and packaging functions fo

8. Between 1960 and 1976, all of the goods purchased by Fimex from Barmatic were sold and shipped directly by Barmati to Fimex. Some of the goods purchased by Fimex from Barmatic wo purchased with the intention of reselling those goods abroad. So of the goods purchased by Fimex from Barmatic were purchased wit the intention of reselling those goods within the United States.

9. Due to the discriminatory prices charged to Fimex by Barmatic, Fimex was unable to resell goods it had purchased f Barmatic and those goods remain in Fimex's possession.

10. Fimex did purchase goods from Barmatic for resal within the United States and territories under the jurisdiction of the United States.

11. Barmatic did not make any distinction in price between the goods it sold to Fimex for resale abroad and the goo it sold to Fimex for resale within the United States.

Dated: New York, New York
January 26, 1977

Respectfully submitted,

JULIEN & SCHLESINGER, P.C.
Attorneys for Plaintiff
2 Lafayette Street
New York, New York 10007
(212) 962-8020

To:

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475 Park Avenue
New York, New York 10016

Arent, Fox, Kintner, Plotkin & Kahn, Esqs.
1815 H Street, N.W.
Washington, D.C. 20006

AFFIDAVIT OF ISAAC L. COHEN DATED JANUARY 6, 1977 IN OPPOSITION TO THE DEFENDANT'S MOTION TO DISMISS AND EXHIBITS ANNEXED THERETO (pp. 39a-55a)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

FIMEX CORP., Plaintiff,	76 Civ. 2021
-against-	Judge Platt
BARMATIC PRODUCTS CO., Defendant.	Affidavit in Opposition

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ISAAC L. COHEN, being duly sworn, deposes and says:

I am the Vice President of the plaintiff herein, Fimex Corp. ("Fimex") and am making this affidavit in opposition to the defendant's motion to dismiss the plaintiff's complaint and/or for summary judgment. The alleged basis for summary judgment is that there is no question that the plaintiff purchased the defendant's products solely for export. This is completely and totally untrue and summary judgment should not be granted.

Fimex is a distributor of auto parts in the United States and abroad. Contrary to the claim of the defendant in this action, the plaintiff is not solely an exporter. Annexed hereto as Exhibit B are certain invoices to domestic corporations indicating sales within the United States.

Your deponent is unable to recall all of Fimex's purchases of auto parts from the defendant, however, your deponent does recall that approximately two years ago the plaintiff purchased tie rods # ES140L from the defendant for sale in the domestic market. Due to the discriminatory price which the defendant charged the plaintiff, the plaintiff has been unable to resell those tie rods and they are still sitting in its warehouse.

Your deponent cannot understand why the plaintiff's action should be dismissed on the ground that the Robinson-Patman Act is inapplicable to the sale of tie rods made by Barmatic Products Co. ("Barmatic") to the plaintiff, at least some of which sales the plaintiff did not intend to export.

There can be no question that Barmatic's charging the plaintiff a higher price for tie rods has made it impossible for the plaintiff to compete in the domestic market and difficult to obtain sales for export abroad. Although I cannot recall each instance in which a customer refused to purchase tie rods because my price was not competitive, I do recall at least two instances, both of which occurred during approximately the past three years. On both occasions, I was advised that my customer would not purchase tie rods from me because my prices were not competitive. These two instances involve conversations with Mr. Hix of Elgin Machine of Elgin, Illinois and with Jay Bock of Bobro Products in Garden City, Long Island.

It is difficult for me to comprehend the defendant's position that the Robinson-Patman Act is inapplicable to the plaintiff's claims because the products sold to the plaintiff by the defendant were not all resold in the American market when it was Barmatic's discriminatory price to the plaintiff which prevented the plaintiff from competing and selling Barmatic's products in the American market and even made it difficult for the plaintiff to sell Barmatic's products abroad.

The plaintiff is a business located in the United States which purchased Barmatic's products for resale, both here and abroad, and was unable to compete in the resale of Barmatic's products because of the defendant's discriminatory pricing scheme. In light of the foregoing, the Robinson-Patman Act seems to clearly apply.

One of the items sold by the plaintiff are tie rods. For many years the plaintiff has been unable to compete in the domestic sale of tie rods, particularly the products of the defendant herein. Your deponent was the principal operating officer of the plaintiff and had no way of knowing that the reason the plaintiff could not compete was because the defendant Barmatic was charging the plaintiff a much higher price than it was charging the plaintiff's competitors.

It was only in the spring of 1976, when the plaintiff hired a new employee who had previously worked for a competing auto parts company that the plaintiff for the first time was made aware that the price list given to the plaintiff by Barmatic was different and contained different prices than the price list given the plaintiff's competitors. A copy of both price lists showing the different prices are annexed hereto as Exhibit A.

Prior to being made aware of the existence of this price list, there was no way in which the plaintiff could have become aware of the discriminatory prices charged to the plaintiff by the defendant since the defendant concealed the existence of a second price list from the plaintiff. Immediately after becoming aware of this, the plaintiff commenced this action.

Wherefore, it is respectfully requested that the defendant's motion for summary judgment and/or to dismiss the complaint be denied in all respects.

ISAAC L. COHEN

Sworn to before me this
6th day of January, 1977.

Notary Public

DENISE J. MORTNER
Notary Public, State of New York
No. [illegible]
Qualified [illegible]
Term Expires [illegible]

BARMATIC PRODUCTS

42a

Price List 1976

DEC 29 1975

TERMS 1% TEN DAYS From Date Of Invoice. NET 30 DAYS.

DELIVERY ; F.O.B. CLEVELAND,OHIO.

1. Prices quoted are per hundred pieces in BULK ONLY.
2. Prices do not include Federal Exise Tax. Taxable parts are so noted and will require proofs of Export and or Exemption Certificates in order to be absolved from the Tax.
3. Enclosed prices replace and supersede all previous price lists and are subject to change without notice.
4. Pack and Hold orders will not be accepted. We must have definite shipping instructions. Orders must state ship and cancel or ship and backorder. WE will not Hold for a percentage of completion.
5. Mininum order $25.00 Mininum order per item 15 pieces.
6. Quantity prices apply to parts shipped to one destination under one purchase order with definite shipping dates and scheduled for shipment within a three month period.
7. Delivery schedules moved back are subject to charges for material and labor costs incurred to that point.
8. Charges for canceled orders will be made for material on hand material coming in which we cannot cancel, and labor costs incurred to that point.
9. Contact our Frank Kantor with regard to Delivery.

THESE PRICES ARE EFFECTIVE ON ALL SHIPMENTS MADE ON OR AFTER FEBUARY 1, 1976.

BARMATIC PRODUCTS CO.
13605 UNION AVENUE
CLEVELAND, OHIO 44120
(216) 921-5340

EXHIBIT A

NO.	PER C BULK	1,20	WT PER BULK
	15 PIECES MININUM PER ITEM		
6 R or L	USE 174 R or L		
– 22 R or L	1162.00	1394	375
25 R or L	198.00	238	75
– 26 R or L	255.00	306	106 ¼
29 R or L	450.00	540	100
58 R or L	USE 262 R or L		
60 R or L	310.00	372	100
61 R or L	USE 60R & 131L		
62 R	USE 140 R		
62 L	198.00	238	75
64 R or L	USE 416 R or L		
– 75 R or L	515.00	618	200
78 RL	USE 290 R		
84 R or L	USE 173 R or L		
98 R or L	USE 150 R or L		
101 R or L	USE 262 R or L		
103 NR	265.00	318	87 ½
† 105 R or L	180.00	216	81 ¼
106 R or L	USE 161 R or L		
122 R	USE 75 R		
123 R or L	USE 75 R or L		
131 R	USE 60 R		
131 L	310.00	372	100
140 R	160.00	192	75
140 L	337.00	404	118 ¾
– 142 R or L	373.00	448	212 ½
† 145 RL	203.00	244	75
149 R or L	USE 75 R or L		
– 150 R or L	210.00	2,52	106 ¼
154 RL	USE 195 L		
156 RL	190.00	228	87 ½
158 R or L	USE 60 R or L		
159 R or L	USE 194 R or L		
160 RL	USE 176 R		
† 161 R or L	165.00	198	68 ¾
† 165 R or L	180.00	216	81 ¼
† 166 R or L	225.00	270	75
167 R or L	USE 173 R or L		
† 168 R or L	203.00	244	75
† 170 R	200.00	240	150
† 170 L	165.00	198	56 ¼
172 R	USE 75 R		
– 172 L	490.00	588	200
173 R or L	198.00	238	75
– 174 R or L	515.00	618	193 ¾
– 176 R or L	459.00	551	225
– 177 R	165.00	198	56 ¼
178 R or L	171.00	205	75

NO.	PER C BULK		WT PER BULK
	15 PIECES MININUM PER ITEM		
† 181 RL	190.00	228	87 ½
† 182 RL	190.00	228	87 ½
– 184 R or L	274.00	329	150
– 185 R or L	554.00	665	193 ¾
186 R or L	USE 168 R or L		
– 187 R or L	575.00	690	325
– 188 NR or NL	1162.00	1394	375
† 191 R or L	107.00	128	62 ½
– 193 R or L	738.00 –	8,86	206 ½
– 194 R or L	385.00	462	150
195 L	150.00	180	68 ¾
199 R	USE 142 R		
200 R	USE 194 R		
234 L	194.00	233	75
– 235 NR or NL	455.00	546	193 ¾
236 R	USE 320 NR		
237 R	USE 321 NR		
238 R or L	USE 290 R		
† 245 R	263.00	316	62 ½
– 258 R or L	170.00	204	81 ¼
– 260 R	354.00	425	150
† – 260 L	354.00	425	150
– 261 R or L	317.00	380	81 ¼
– 262 R or L	190.00	228	100
– 264 R or L	USE 304 R or L		
265 R or L	USE 312 NL		
265 NR or NL	USE 312 NL		
† 266 R	203.00	244	75
† 267 R	203.00	244	75
† 268 R or L	289.00	347	87 ½
269 R or L	230.00	276	81 ¼
270 R or L	USE 302 R		
272 R	152.00	182	81 ¼
273 R	USE 317 L		
274 L	USE 317 R		
277 R	269.00	323	68 ¾
278 L	269.00	323	68 ¾
– 279 R or L	USE 187 R or L		
– 280 R or L	564.00	677	225
281 L	249.00	299	100
282 L	215.00	258	100
283 R	USE 320 NR		
284 R	USE 321 NR		
285 R	181.00	217	100
287 L	243.00	292	100
– 288 R or L	202.00	242	75
289 R	227.00	272	75
290 R	192.00	230	75

– TAXABLE † LIMITED STOCK

◆ TUBE ONLY

* AVAILABLE FIRST QUARTER 1976

NO.	PER C BULK		WT PER BULK
	15 PIECES MININUM PER ITEM		
291 R or L	USE 416 R or L		
– 297 RL	255.00	306	62 ½
† 302 R	229.00	275	75
– 304 R or L	671.00	805	225
305 L	351.00	421	100
– 307 R or L	347.00	416	131 ¼
312 R	USE 312 NL		
312 NL	188.00	226	81 ¼
† 312 S	145.00	174	62 ½
– 313 R	512.00	614	125
314 R	208.00	250	100
316 R	189.00	227	100
317 R or L	222.00	266	68 ¾
319 R or L	248.00	[illegible]	81 ¼
319 S	117.00	140	75
320 NR	318.00	[illegible]	100
† 321 NR	332.00	398	93 ¾
322 L	244.00	293	100
323 R or L	205.00	246	87 ½
† 328 R or L	428.00	514	118 ¾
– 330 R or L	589.00	707	275
– 332 R or L	837.00	1004	350
333 R	240.00	268	143 ¾
336 R	336.00	403	100
336 L	417.00	500	118 ¾
337 L	293.00	352	87 ½
338 R	190.00	228	100
339 L	190.00	228	100
350 R	220.00	264	131 ¼
350 L	210.00	252	131 ¼
350 S	125.00	150	62 ½
351 L	182.00	218	100
352 R	250.00	300	87 ½
352 L	349.00	419	137 ½
353 R	USE 384 R		
– 354 R or L	282.00	338	100
355 L	248.00	298	87 ½
355 S	130.00	156	100
– 358 R	334.00	401	162 ½
– 358 L	309.00	371	162 ½
359 R	413.00	496	175
359 L	354.00	425	112 ½
360 R	322.00	386	100
– 362 R	339.00	407	162 ½
363 L	329.00	395	168 ¾
364 L	338.00	407	168 ¾
366 R or L	USE 350 R or L		
– 367 R	424.00	509	193 ¾

NO.	PER C BULK		WT PER BULK
	15 PIECES MININUM PER ITEM		
368 L	209.00	251	87 ½
369 L	249.00	299	106 ½
370 R	218.00	262	125
– 373 R or L	890.00	1068	200
378 R or L	223.00	268	131 ¼
379 L	192.00	230	93 ¾
381 R	220.00	264	106 ¼
† 384 R	435.00	522	112 ½
387 R	302.00	362	100
387 L	316.00	379	150
389 L	241.00	289	143 ¾
401 R or L	305.00	366	81 ¼
• 403 R	383.00	460	156 ¼
• 403 L	420.00	504	156 ¼
403 S	251.00	301	100
404 R	400.00	480	106 ½
406 R or L	324.00	389	143
– 409 R	458.00	550	143 ¾
– 409 L	431.00	517	181 ¼
– 414 R	416.00	499	150
416 R or L	157.00	188	75
417 R	370.00	444	50
425 R	298.00	358	112
426 L	361.00	433	100
427 R	518.00	622	150
427 L	477.00	572	150
– 428 R or L	416.00	499	143 ¾
429 R	367.00	560	87 ½
436 L	365.00	438	175
– 437 L	445.00	534	
– 438 R	350.00	420	
441 R	317.00	380	
442 L	317.00	380	
443 L	317.00	380	
445 R	326.00	391	
	DRAG LINKS		
† 500 S	101.00	121	43 ¾
† 502	600.00	720	406 ¼
† – 506	320.00	384	493 ¾
† – 509	320.00	384	612
† 559	170.00	204	218 ¾
† 559 A	USE 559–500S–156 RL		

– TAXABLE † LIMITED STOCK

◆ TUBE ONLY

• AVAILABLE FIRST QUARTER 1976

TIE ROD ENDS – DRAG LINKS – SLEEVES
BULK

FEBUARY 1, 1976

NO.	PER C BULK		WT PER BULK C
	15 PIECES MININUM PER ITEM		
† 577 S	217.00	260	37 ½
† 578 S	134.00	161	50
579	USE 668		
579 A	USE 612 AN		
597	303.00	364	156 ¼
597 B	USE 597–312S–312 NL		
598	903.00	1684	581 ¼
† 606	253.00	304	250
† 606 A	USE 606–500S–272 R		
† 607 S	152.00	182	50
612 AN	USE 668–500S–320 NR		
615	351.00	421	250
† 616	400.00	480	262 ½
619 S	175.00	210	75
638 S	130.00	156	93 ¾
643	1072.00	1286	587 ¾
† 644	289.00	347	143 ¾
645 S	159.00	191	50
– 653	777.00	932	406 ¼
– 658	543.00	641	275
† 661	342.00	410	162 ½
668	323.00	388	143 ¾
675	323.00	388	162 ½
676	299.00	359	162 ½
– 678	234.00	281	125
681 N	254.00	305	143 ¾
† 682	738.00	886	525
683 S	120.00	144	50
– 684	971.00	1165	418 ¾
† 689	1483.00	1780	562
695	USE 757		
– 704	752.00	902	481 ¼
– 705	1245.00	1494	662 ½
† 713	420.00	504	150
† 722	393.00	472	187 ½
727	311.00	373	193 ¾
– 733	1044.00	1253	662 ½
– 736	437.00	524	343 ¾
– 737	965.00	1158	1025
739	868.00	1042	693 ¾
740	853.00	1024	537 ½
– 741	598.00	718	491 ¼
– 742	1391.00	1669	1300
748	772.00	926	668 ¾
749	781.00	937	512 ¼

– TAXABLE † LIMITED STOCK

◆ TUBE ONLY

* AVAILABLE FIRST QUATER 1976

NO.	PER C BULK		WT PER BULK C
	15 PIECES MININUM PER ITEM		
756	831.00	997	856 ¼
757	437.00	524	168 ¾
780	1006.00	1207	668 ¾
– 794	493.00	592	350
– 800	1154.00	1385	593 ¾
802	399.00	479	225
809	987.00	1184	668

CHEVROLET PROPELLOR SHAFT BUSHINGS

† 595005	53.00		
3634733	83.74		57
			60

WILLYS JEEP

A–837	14.60		
642178	337.00		6
642056	USE 140R–62L–642058–2PS A–837		125
642057	USE 140R–140L–642059–2PS A–837		
† ◆ 642058	236.00		137
† ◆ 642059	248.00		150
808590	86.00		6
– 809190	170.00		75
– 809191	170.00		75
920535	198.00		75
921055	47.00		11
921317	160.00		75
932191	190.00		100
932192	190.00		100

BALL JOINTS

10099	320.00		131
10099 S	310.00		125
10174	350.00		118
10174 S	340.00		112
10232	350.00		137
10232 S	340.00		131

S – SHORT DUST COVER

RUBBER SPRING SHACKLE BUSHINGS

FEBUARY 1, 1976

NO.		PER C BULK	WT PER C BULK
RB-1W		70.00	32
	1000	51.00	
	2500 & OVER	45.00	
† RB-7W		70.00	24
	500 & OVER	53.00	
† RB-27		23.00	37
RB-30		[illegible]	11
	2500	[illegible]	
	10M & OVER	[illegible]	
† RB-31		38.50	21
† RB-33		29.70	19
RB-37		47.00	11
	2500	27.00	
	5M & OVER	24.20	
RB-38	USE RB-30		
RB-40		79.00	47
	1000 & OVER	52.00	
RB-45		55.00	16
	1000 & OVER	37.00	
† RB-47		60.00	34
	500 & OVER	51.00	
– RB-52		57.00	27
	1000	47.00	
	5000 & OVER	42.00	
– RB-57		55.00	22
	1000	46.00	
	2500 & OVER	42.00	
† – RB-58		80.00	52
	1000 & OVER	61.00	
RB-60		90.00	79
	1000	74.00	
	2500 & OVER	65.00	
– RB-62		89.00	51
	1000	74.00	
	2500 & OVER	60.00	
† – RB-66		46.00	27
	1000 & OVER	31.00	
RB-68		47.00	12
	1000 & OVER	27.00	
– RB-70		75.00	37
	1000 & OVER	58.00	
† – RB-71		71.00	43
	1000 & OVER	51.00	
† – RB-72		82.00	56
	1000 & OVER	63.00	
– RB-73		125.00	81
	1000 & OVER	97.00	
	2500 & OVER	90.00	

– TAXABLE

† LIMITED STOCK

THREADED BUSHINGS

FEBUARY 1, 1976

PRICES PER HUNDRED IN QUANTITIES OF:

NO.	1–499	500–999	1000–2499	2500 & OVER	WT PER C BULK
– TB–26	265.65	247.17	211.37	169.79	128
† – TB–44	95.00				62
† – TB–65	49.00				
– TB–68	271.42	255.25	219.45	177.87	125
– TB–69	258.72	240.24	204.44	162.97	106
– TB–70	262.19	225.23	218.30	204.44	56
– BP–1037	MIN. 500	247.17	211.37	169.79	124
– BP–1038	MIN. 500	363.00			156
– BP–1072	MIN. 500	247.17	211.37	169.79	126
– BP–1234	MIN. 500	247.17	211.37	169.79	126

BP – BUSHINGS NOT STOCKED MININUM ORDER 500.

– TAXABLE

† LIMITED STOCK

BEST COPY AVAILABLE

TIE ROD ENDS – DRAG LINKS – SLEEVES
BULK

FEBUARY 1, 1976

NO.	PER C BULK	STANDARD PACK MULTIPLE	PER C MULTIPLE PRICE	WT PER BULK C
	15 PIECES MININUM PER ITEM			
6 R or L	USE 174 R or L			
– 22 R or L	1162.00			375
25 R or L	198.00			75
– 26 R or L	255.00	100	194.00	106 ¼
29 R or L	450.00	100	379.00	100
58 R or L	USE 262 R or L			
60 R or L	310.00	100	250.00	100
61 R or L	USE 60R & 131L			
62 R	USE 140 R			
62 L	198.00	200	150.00	75
63 R or L	USE 416 R or L			
– 75 R or L	515.00	50	429.00	200
78 RL	USE 290 R			
84 R or L	USE 173 R or L			
88 R or L	USE 150 R or L			
101 R or L	USE 262 R or L			
103 NR	265.00	50	223.00	87 ½
† 105 R or L	180.00			81 ¼
106 R or L	USE 161 R or L			
122 R	USE 75 R			
123 R or L	USE 75 R or L			
131 R	USE 60 R			
131 L	310.00	100	250.00	100
140 R	160.00	200	130.00	75
140 L	337.00	100	274.00	118 ¾
– 142 R or L	373.00	50	310.00	212 ½
† 145 RL 45 33	203.00	50	157.00	75
149 R or L	USE 75 R or L			
– 150 R or L	210.00	100	170.00	106 ¼
154 RL	USE 195 L			
156 RL	190.00	50	171.00	87 ½
158 R or L	USE 60 R or L			
– 159 R or L	USE 194 R or L			
160 RL	USE 176 R			
† 161 R or L	165.00	50	149.00	68 ¾
† 165 R or L	180.00	50	145.00	81 ¼
† 166 R or L	225.00	50	201.00	75
167 R or L	USE 173 R or L			
† 168 R or L	203.00	25	157.00	75
† 170 R	200.00			150
† 170 L	165.00			56 ¼
172 R	USE 75 R			
– 172 L	490.00	50	419.00	200
173 R or L	198.00	100	157.00	75
– 174 R or L	515.00	50	429.00	193 ¾
– 176 R or L	459.00	45	387.00	225
– 177 R	165.00	50	149.00	56 ¼
178 R or L	171.00	100	150.00	75

NO.	PER C BULK	STANDARD PACK MULTIPLE	PER C MULTIPLE PRICE	WT PER BULK C
	15 PIECES MININUM PER ITEM			
† 181 RL	190.00			87 ½
† 182 RL	190.00			87 ½
– 184 R or L	274.00	75	227.00	150
– 185 R or L	554.00	50	470.00	193 ¾
186 R or L	USE 168 R or L			
– 187 R or L	575.00	35	530.00	325
– 188 NR or NL	1162.00			375
† 191 R or L	107.00			62 ½
– 193 R or L	738.00	50	625.00	206 ½
– 194 R or L	385.00	75	330.00	150
195 L	150.00	100	135.00	68 ¾
199 R	USE 142 R			
200 R	USE 194 R			
234 L 1431.50	194.00	200	157.00	75
– 235 NR or NL	455.00	50	381.00	193 ¾
236 R	USE 320 NR			
237 R	USE 321 NR			
238 R or L	USE 290 R			
† 245 R	263.00	50	215.00	62 ½
– 258 R or L	170.00	100	139.00	81 ¼
– 260 R	354.00	25	295.00	160
† – 260 L	354.00	25	295.00	150
– 261 R or L	317.00	75	260.00	81 ¼
– 262 R or L	190.00	100	157.00	100
– 264 R or L	USE 304 R or L			
265 R or L	USE 312 NL			
265 NR or NL	USE 312 NL			
† 266 R	203.00			75
† 267 R	203.00			75
† 268 R or L	289.00	50	238.00	87 ½
269 R or L	230.00	25	180.00	81 ¼
270 R or L	USE 302 R			
272 R	152.00	100	124.00	81 ¼
273 R	USE 317 L			
274 L	USE 317 R			
277 R	269.00	100	220.00	68 ¾
278 L	269.00	100	220.00	68 ¾
– 279 R or L	USE 187 R or L			
– 280 R or L	564.00	50	509.00	225
281 L	249.00	100	209.00	100
282 L 520.55	215.00	100	174.00	100
283 R	USE 320 NR			
284 R	USE 321 NR			
285 R	181.00	100	156.00	100
287 L	243.00	100	195.00	100
– 288 R or L	202.00	200	162.00	75
289 R	227.00	50	190.00	75
290 R	192.00	200	157.00	75

– TAXABLE † LIMITED STOCK

TIE ROD ENDS — DRAG LINKS — SLEEVES

BULK

FEBUARY 1, 1976

NO.	PER C BULK	STANDARD PACK MULTIPLE	PER C MULTIPLE PRICE	WT PER BULK C
	15 PIECES MININUM PER ITEM			
291 L or L	USE 416 R or L			
291 RL	255.00	100	211.00	62 ½
302 R	229.00	50	189.00	75
304 R or L	671.00	50	576.00	225
305 L	351.00			100
307 R or L	347.00			131 ¼
312 R	USE 312 NL			
312 NL	188.00	200	153.00	81 ¼
313 R	145.00	100	139.00	62 ½
313 NR	312.00			125
314 R	208.00	100	169.00	100
316 R	189.00	100	157.00	100
317 R or L	222.00	200	181.00	68 ¾
318 R or L	248.00	200	202.00	81 ¼
319 S	117.00			75
320 NR	318.00	100	265.00	100
321 NR	332.00	50	282.00	93 ¾
322 L	244.00	100	202.00	100
323 R or L	205.00	100	166.00	87 ½
328 R or L	428.00			118 ¾
330 R or L	589.00			275
332 R or L	837.00			350
335 R	240.00	100	203.00	143 ¾
336 R	336.00			100
336 L	417.00			118 ¾
337 L	293.00			87 ½
338 R	190.00	100	160.00	100
338 L	190.00	100	160.00	100
340 R	220.00	100	186.00	131 ¼
340 L	210.00	100	173.00	131 ¼
341 R	125.00			62 ½
341 L	182.00	100	151.00	100
342 R	250.00	100	210.00	87 ½
342 L	349.00			137 ½
351 R	USE 384 R			
354 R or L	282.00	100	238.00	100
355 L	248.00	100	208.00	87 ½
356 L	130.00			100
358 R	334.00	50	283.00	162 ½
359 L	309.00	50	261.00	162 ½
359 R	413.00			175
360 L	354.00			112 ½
360 R	322.00			100
362 R	339.00			162 ½
363 L	329.00			168 ¾
364 L	338.00			168 ¾
364 R or L	USE 350 R or L			
367 R	424.00			193 ¾

NO.	PER C BULK	STANDARD PACK MULTIPLE	PER C MULTIPLE PRICE	WT PER BULK C
	15 PIECES MININUM PER ITEM			
368 L	209.00	100	169.00	87 ½
369 L	249.00	100	209.00	106 ½
370 R	218.00	100	179.00	125
373 R or L	890.00			200
378 R or L	223.00	100	184.00	131 ¼
379 L	192.00	100	157.00	93 ¾
381 R	220.00	100	184.00	106 ¼
† 384 R	435.00			112 ½
387 R	302.00			100
387 L	316.00			150
389 L	241.00	75	202.00	143 ¾
401 R or L	305.00			81 ¼
• 403 R	383.00	50	325.00	156 ¼
• 403 L	420.00	50	359.00	156 ¼
403 S	251.00			100
404 R	400.00	100	339.00	106 ½
406 R or L	324.00			143
409 R	458.00			143 ¾
409 L	431.00			181 ¼
414 R	416.00			150
416 R or L	157.00	200	127.00	75
417 R	370.00			50
425 R	298.00			112
426 L	361.00			100
427 R	518.00			150
427 L	477.00			150
428 R or L	416.00			143 ¾
429 R	367.00			87 ½
436 L	365.00			175
437 L	445.00			
438 R	350.00			
441 R	317.00			
442 L	317.00			
443 L	317.00			
445 R	326.00			
	DRAG LINKS			
† 500 S	101.00	200	79.00	43 ¾
† 502	600.00	30	540.00	406 ¼
† — 506	320.00			493 ¾
† — 509	320.00			612
† 559	170.00			218 ¾
† 559 A	USE 559—500S—156 RL			

— TAXABLE † LIMITED STOCK

TIE ROD ENDS – DRAG LINKS – SLEEVES
BULK

FEBUARY 1, 1976

NO.	PER C BULK	STANDARD PACK MULTIPLE	PER C MULTIPLE PRICE	WT PER BULK C
	15 PIECES MININUM PER ITEM			
577 S	217.00	200	181.00	37 ½
578 S	134.00	50	108.00	50
579	USE 668			
579 A	USE 612 AN			
597	303.00	75	256.00	156 ¼
597 B	USE 597–312S–312 NL			
598	903.00			581 ¼
605	253.00	50	212.00	250
606 A	USE 606–500S–272 R			
607 S	152.00	100	124.00	50
612 AN	USE 858–500S–320 NR			
616	351.00			250
616	400.00			262 ½
619 S	75.00			75
638 S	180.00			93 ¾
643	1072.00			587 ¾
† 644	289.00			143 ¾
645 S	159.00	200	130.00	50
– 653	777.00			406 ¼
– 658	543.00			275
† 661	342.00			162 ½
668	323.00	100	274.00	143 ¾
675	323.00			162 ½
676	299.00	75	253.00	162 ½
– 678	234.00	100	195.00	125
681 N	254.00	100	213.00	143 ¾
† 682	738.00			525
683 S	120.00			50
– 684	971.00			418 ¾
[illegible]	1483.00			562
695	USE 757			
– 704	752.00			481 ¼
– 705	1245.00			662 ½
† 713	420.00			150
† 722	393.00			187 ½
727	311.00			193 ¾
– 733	1044.00			662 ½
– 736	437.00			343 ¾
– 737	965.00			1025
739	868.00			693 ¾
740	853.00			837 ½
– 741	598.00			493 ¾
– 742	1391.00			1300
748	772.00			668 ¼
749	781.00			512 ¼

– TAXABLE † LIMITED STOCK

NO.	PER C BULK	STANDARD PACK MULTIPLE	PER C MULTIPLE PRICE	WT PER BULK C
	15 PIECES MININUM PER ITEM			
– 756	831.00			856 ¼
757	437.00			168 ¾
780	1006.00			668 ¾
– 794	493.00			350
– 800	1154.00			593 ¾
802	399.00			225
809	987.00			668 ¾

CHEVROLET PROPELLOR SHAFT BUSHINGS

† 595005	53.00			37
† 3694733	83.74			60

WILLYS JEEP

A–837	14.60	750	10.25	6
640178	337.00	100	274.00	125
642056	USE 140R–62L–642058–2PS A–837			
642057	USE 140R–140L–642059–2PS A–837			
† ◆ 642058	236.00	500	197.00	137
† ◆ 642059	248.00	500	207.00	150
808590	86.00	2000	69.00	6
– 809190	170.00	100	139.00	75
– 809191	170.00	100	139.00	75
920535	198.00	200	150.00	75
921055	47.00	200	22.90	11
921317	160.00	200	130.00	75
932191	190.00	100	160.00	100
932192	190.00	100	160.00	100

BALL JOINTS

10039	320.00	1500	285.00	131
10099 S	310.00	1500	275.00	125
10174	350.00	1500	300.00	118
10174 S	340.00	1500	290.00	112
10232	350.00	1500	300.00	137
10232 S	340.00	1500	290.00	131

S – SHORT DUST COVER

RUBBER SPRING SHACKLE BUSHINGS

FEBUARY 1, 1976

NO.		PER C BULK	WT PER C BULK
RB-1W		70.00	32
	1000	51.00	
	2500 & OVER	45.00	
† RB-7W		70.00	24
	500 & OVER	53.00	
† RB-27		23.00	37
RB-30		47.00	11
	2500	27.00	
	10M & OVER	24.20	
† RB-31		38.50	21
† RB-33		29.70	19
RB-37		47.00	11
	2500	27.00	
	5M & OVER	24.20	
RB-38	USE RB-30		
RB-40		79.00	47
	1000 & OVER	62.00	
RB-45		55.00	16
	1000 & OVER	37.00	
† RB-47		60.00	34
	500 & OVER	51.00	
– RB-52		57.00	27
	1000	47.00	
	5000 & OVER	42.00	
– RB-57		55.00	22
	1000	46.00	
	2500 & OVER	42.00	
† – RB-58		80.00	52
	1000 & OVER	61.00	
RB-60		90.00	79
	1000	74.00	
	2500 & OVER	65.00	
– RB-62		39.00	51
	1000	74.00	
	2500 & OVER	60.00	
† – RB-66		46.00	27
	1000 & OVER	31.00	
RB-68		47.00	12
	1000 & OVER	27.00	
– RB-70		75.00	37
	1000 & OVER	58.00	
† – RB-71		71.00	43
	1000 & OVER	51.00	
† – RB-72		82.00	56
	1000 & OVER	63.00	
– RB-73		125.00	81
	1000 & OVER	97.00	
	2500 & OVER	90.00	

– TAXABLE

† LIMITED STOCK

THREADED BUSHINGS

FEBUARY 1, 1976

PRICES PER HUNDRED IN QUANTITIES OF:

NO.	1-499	500-999	1000-2499	2500 & OVER	WT PER C BULK
TB-26	265.65	247.17	211.37	169.79	128
† – TB-44	95.00				62
† – TB-65	49.00				
– TB-68	271.42		219.45	177.87	125
– TB-69	258.72	240.24	204.44	162.97	106
– TB-70	262.19	225.23	218.30	204.44	56
– BP-1037	MIN. 500	247.17	211.37	169.79	124
– BP-1038	MIN. 500	363.00			156
– BP-1072	MIN. 500	247.17	211.37	169.79	126
– BP-1234	MIN. 500	247.17	211.37	169.79	126

BP – BUSHINGS NOT STOCKED MININUM ORDER 500.

– TAXABLE

† LIMITED STOCK

BEST COPY AVAILABLE

FIMEX CORP.

135 EILEEN WAY
SYOSSET (L. I.) N. Y. - 11791

TELEPHONES
(516) - 364 - 2510
(516) - 364 - 2511

SOLD TO
GUITY INT'L C
276 FIFTH AV
NEW YORK CITY, [illegible] 10016

MARKS:
GUITY
NEOE AMSHAR
5521/1 - 24

DATE	OUR ORDER NO. / YOUR ORDER NO.	SHIPPED VIA:	PAYMENT
May 8, 1979	[illegible]		CASH

		DESCRIPTION OF MERCHANDISE	[illegible]	Net				
		20 (AS [illegible]) CARTONS: AUTO S[illegible] PARTS (GENUINE JEEP)						
5521/ Carton 1 (28x18x16)	[illegible]	oil pump	[illegible]	175	23	10	970	20
Carton 2 (28x18x16	[illegible]	[illegible]	[illegible]	105	20	41	102	05
	[illegible]	[illegible]			16	03	147	12
	8	[illegible]			5	77	173	10
	50	[illegible]	shaft		5	79	150	54
	20	[illegible]	handle		0	53	67	31
	[illegible]	[illegible]	oil seal		4	55	455	00
	100	[illegible]	lock		7	28	29	1[illegible]
	6	[illegible]	chain		[illegible]	98	282	5[illegible]
	[illegible]	[illegible]	cable					
Carton 3	9	[illegible]	chain	[illegible]	148	7	28	43	6[illegible]
	20	[illegible]	[illegible]			4	85	126	1[illegible]
	50	[illegible]	[illegible]			0	84	42	0[illegible]
	[illegible]	[illegible]	carburator			25	57	102	2[illegible]
	100	991-684	coupling			3	81	381	0
	4	688817	handle			3	92	15	6
Skid 4 (50x41x36	40	[illegible]	crankshaft	[illegible]	[illegible]	97	61	3504	4
Cases 5-2[illegible] (26x21x17	20 (Lee)	30[illegible]	block	[illegible]	225	385	84	7716	8
			Total value [illegible]					$14,308
			Export packing					429
			TOTAL FOB OUR WA[illegible]					$14,738

Total Gross [illegible] [illegible] lbs.
Total Net Weight [illegible] lbs.

These goods are not for export to Iran

These commodities licensed by U.S. [illegible] for ultimate destination IRAN [illegible] contrary to U.S. law prohibited.

FIMEX CORP.

EXHIBIT R

54a

FIMEX CORP.

135 EILEEN WAY

SYOSSET (L. I.) N. Y. - 11791

TELEPHONES
(516) - 364 - 2510
(516) - 364 - 2511

MARKS:

SOLD TO

Glen Truck Sales & Service Inc.
217 West Third Street
Mount Vernon, New York 10550

DATE	OUR ORDER NO.	SHIPPED VIA:	PAYMENT
June 13,1972	5171		Net cash
	YOUR ORDER NO.		

DESCRIPTION OF MERCHANDISE

AUTO SPARE PARTS

36	127240 H1	spindle	91.07	3278.52
83	136245 H1	shaft	39.05	3241.15
169	299640 R91	band	27.61	4666.09
1300	32576 DX	screw	0.59	767.00
1266	32581 DXB	cage	1.84	2329.44
500	60947 D	package	0.24	120.00
8	127132 H1	hub	108.66	869.28
58	291660 C91	window	28.89	1675.62
41	133470 R1	housing	84.10	3448.10
95	213282 R91	kit	32.76	3112.20
110	215678 R93	filter	19.68	2164.80
34	250947 R96	ring set	17.27	587.18
78	277514 R1	shoe	9.26	722.28
18	279552 R11	disc	30.94	556.92
28	317452 R1	brg. cap	32.67	914.76
96	318859 R2	gear	61.23	5878.08
98	338395 R5	element	19.93	1953.14
31	865110 R91	absorber	6.72	208.32
156	876150 R11	arm	7.77	1212.12
40	967163 R91	repair kit	5.83	233.20
14	1969194	Case	22.95	321.30
330	804653 C91	arm	2.71	894.30
45	216310 R1	drum	32.39	1457.55

Total $40,611.35
less 20%. 8,122.27

Total Net..... $32,489.08

Fimex corp.

552

FIMEX CORP.

135 EILEEN WAY
SYOSSET (L. I.) N. Y. - 11791

(516) - 364 - 2510
(516) - 364 - 2511

MARKS:

SOLD TO

Perfection American Company
Route 5, Dovesville Highway
Darlington, South Carolina 29532

DATE	OUR ORDER NO.	YOUR ORDER NO.	SHIPPED VIA:	PAYMENT
February 28, 1975	5834	1-1524	Associated Transport	Net - 30 days

DESCRIPTION OF MERCHANDISE

2 CARTONS: AUTO SPARE PARTS

4	291-10	258002	99531	14	90	59	60
300	275-14	1669891	92197	4	96	1488	00
10	243-2M	2466993	96719	14	50	145	00
125	277-31	1924510	93654	16	20	2025	00
					$	3717	60
	439 x 20¢ for piece packing					87	80
	TOTAL FOR OUR WAREHOUSE				$	3805	40

Sales tax: For resale, free of tax

Carton #1 723 Lbs.
Carton #2 351 Lbs.

FIMEX CORP.

AFFIDAVIT OF ISAAC L. COHEN DATED FEBRUARY 24, 1977 IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT AND EXHIBITS ANNEXED THERETO

UNITED STATES DISTRICT COURT **(pp. 56a-58a)**

EASTERN DISTRICT OF NEW YORK

FIMEX CORP., Plaintiff,	Affidavit in Opposition
-against-	76 Civ. 2021
BARMATIC PRODUCTS CO., Defendants.	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Isaac L. Cohen, being duly sworn, deposes and says:

I am the Vice President of Fimex Corp., the plaintiff herein, and am submitting this affidavit in opposition to the defendant's motion for summary judgment.

I wish to make it clear that Fimex was never able to make a sale of any Barmatic products within the United States. I attribute this to the fact that we were given a greatly discriminatory price by Barmatic and were thus unable to find customers within the United States or Puerto Rico.

I have read the supplemental reply submitted by the defendant where it refers to the fact that the single item of 500 ES140Ls which I refer to in my prior affidavit as still being in my warehouse were received by me pursuant to a purchase order reading "Fimex OTO, Istanbul" and thus claim that this made it clear that these goods were for export. This is completely untrue as was made clear by me during my deposition (pp. 73-75).

Since this is the defendant's position, I would like to make it clear to the Court that I also have other items which I have been unable to sell, for example, 50 pieces #668 and 100 pieces of 320NR, which were purchased by me from the defendant pursuant to the purchase order dated December 3, 1974, which purchase order made no reference at all as to whether or not these goods were for export or domestic sale (see Exhibit B).

I therefore request that the defendant's motion for summary judgment be denied.

ISAAC L. COHEN

Sworn to before me this
24th day of February, 1977.

Notary Public

December 3, 1974

Barmatic Products Co.
13605 Union Avenue
Cleveland, Ohio 44120

Re: 5735

Dear Mr. Kantor:

Please enter our order for

100	60R
200	60L
200	131L
100	320NR
50	668
100	319R
100	319L

Delivery: Within 90 days to be consolidated on same bill of lading as our order 5597.

Very truly yours,

FIMEX CORP.

ILC:gm

SUPPLEMENTAL AFFIDAVIT OF DAVID JAROSLAWICZ DATED FEBRUARY 25, 1977 IN OPPOSITION TO THE MOTION TO DISMISS AND EXHIBITS ANNEXED THERETO (pp. 59a-65a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

FIMEX CORP.,

Plaintiff,

-against-

BARMATIC PRODUCTS CO.,

Defendant.

----------x

SUPPLEMENTAL AFFIDAVIT IN OPPOSITION

76 CIV 2021

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAVID JAROSLAWICZ, being duly sworn, deposes and says:

I am a member of the firm of JULIEN & SCHLESINGER, P.C., attorneys for the Plaintiff herein, and am making this supplemental affidavit in opposition to the Defendant's motion for summary judgment. The affidavit of ALLAN J. KORECKY submitted in support of the motion for summary judgment makes it clear that BARMATIC had at least two (2) different price lists for the same goods between 1970 and 1976.

The Korecky affidavit indicates by its elusive nature that less than the whole truth is being presented to the Court. According to Korecky, BARMATIC had one price list for

domestic customers and one for customers who consistently advised BARMATIC that the products they were purchasing were being resold in export trade to foreign destinations. In the same paragraph of the affidavit, however, Korecky is compelled to admit that certain customers located in the United States who allegedly purchase for export were nevertheless given the benefit of a different and better price list than that made available to the Plaintiff. This by itself is enough of an admission to indicate a clear violation of the Robinson-Patman Act and is sufficient to deny the Defendant's motion for summary judgment.

However, the Korecky affidavit when it states that the Plaintiff consistently advised the Defendant that it was purchasing goods for export is less than frank with the Court. Annexed hereto as Exhibit "A" is a copy of twenty-eight (28) separate orders placed by the Plaintiff with the Defendant between April 1971 and November 1976 which have no indiaction at all that the goods purchased are to be exported or sold domestically within the United States and Puerto Rico. As to these orders, there is absolutely no basis for the Defendant's statement that it believed that the Plaintiff was going to export these goods. The simple truth is that apparently the Defendant has several different prices lists which it makes available to different customers within the United States regardless of whether or not those goods are sold domestically or for export and the Defendant when it distributes its price list has no knowledge of where the

the goods will be sold. In addition, the Defendant is compelled to admit that even as to exporters located within the United States there are different price lists provided. The Defendant's defense of this practice is that allegedly it is cost justified, however, cost justification is a defense to a Robinson-Patman claim which must be affirmatively proven by the Defendant at a trial of this action and is not the kind of thing which should be disposed of on a motion for summary judgment before discovery has been had and the Defendant has justified its basis for discrimination.

The facts of this case are simply that the Plaintiff purchased various goods from the Defendant for resale both here and abroad. Due to Defendant's discriminatory prices the Plaintiff has been unable to make a single sale domestically and has therefore been compelled to sell the Defendant's products abroad and is still stuck with some goods in its warehouse. Contrary to the Defendant's assertions, the Robinson-Patman Act does not require that goods have actually been resold within the United Stated but only that goods be purchased for resale within the United States. Although this Court permitted the Defendant to obtain the Plaintiff's testimony in support of their motion, during the deposition the Defendant deliberately avoided any questions with regard to the Plaintiff's attempts or intentions to resell the Defendant's goods within the United States but instead persisted in questioning the Plaintiff only

as to whether or not actual resales of the Defendant's goods had occurred within the United States; a matter as to which the Plaintiff had long ago stipulated to that no such actual sales had been made in the United States since the Plaintiff's price was noncompetitive and no buyers could be found within the United States.

On page 83 of the Plaintiff's deposition your deponent made it clear to counsel for the Defendant that no actual resales had occurred within the United States and advised the Defendant that it had an opportunity to determine through the Plaintiff's witnesses as to whether or not the Plaintiff had purchased goods from the Defendant for resale within the United States. Counsel for the Defendant deliberatedly avoided this issue,which is the real factual issue before this Court and which mandates that summary judgment be denied. It is for a jury to determine based upon all the facts and the credibility of the witnesses before them whether or not the Plaintiff's purchase orders (Exhibit "A") led the Defendant into believing that the goods which were purchased were for export and whether or not the Plaintiff purchased the Defendant's goods for export or for resale abroad. It is the Plaintiff's position that the Robinson-Patman Act prohibits discrimination in prices between persons within the United States even if those persons purchased goods for export, however, even that issue need not be reached

at this point in order for the Court to deny the Defendant's motion for summary judgment.

WHEREFORE, it is respectfully requested that the Defendant's motion for summary judgment be denied.

DAVID JAROSLAWICZ

Sworn to before me this
25th day of February, 1977.

EILEEN M. BRENNAN
Notary Public State of New York
No. 30-4515714
Qualified in Nassau County
Term Expires March 30, 19__

July 26, 1976

Barmatic Products Company
13605 Union Avenue
Cleveland, Ohio 44120

RE: 5964

Gentlemen:

Please enter our order for:

150 355L
150 352R

Packing: Bulk

Cartons: Weighing about 150 lbs.

Marks: Fimex
5964

Shipment: As soon as possible; please consolidate on same B/L as our still pending orders.

Very truly yours,

FIMEX CORP.

ILC:mn

July 27, 1976

Barmatic Products
13605 Union Avenue
Cleveland, Ohio 44120

RE: 6039

Gentlemen:

Kindly enter our order for:

10	26-L
10	26-R
6	142-L
6	142-R
50	312-NL
50	597
10	323-L
20	389-L
20	333-R
12	675
50	ES-350-R
70	ES-350-L
10	ES-358-L
10	ES-358-R
15	740
10	DS-748

Packing: Bulk

Cartons: About 150 lbs.

Marks: FIMEX
6039

Shipment: As soon as possible. Try and consolidate on same B/L as our other pending orders

Very truly yours,

FIMEX CORP.

ILC:mn

T 1
md/bw

1 I S A A C L. C O H E N, called as a witness having
2 been first duly sworn by a Notary Public, testified
3 as follows:
4 DIRECT EXAMINATION
5 BY MR. ROMANO:
6 Q My name is Salatore A. Romano. I am an attorney
7 and I represent Barmatic Products Company. For the record,
8 please state your name and address.
9 A My name is Isaac Cohen. My address is
10 2 Revere Road, Roslyn, New York.
11 MR. JAROSLAWICZ: Let the record reflect we
12 were here 9 a.m. pursuant to Judge Platts' direction
13 and because of an apparent confusion we didn't start
14 until 10 a.m.
15 MR. JARMAN: We are putting that on the record,
16 let the record reflect, I believe it is more accurate
17 that the plaintiff's representatives arrived at
18 9:15 a.m.
19 Q Have you ever been deposed before?
20 MR. JAROSLAWICZ: Objection. Don't answer
21 that. That has nothing to do with this lawsuit or
22 anything possibly leading to it.
23 Q Do you understand what a deposition is?
24 A Yes.
25 Q Do you understand that your testimony is being

PENGAD CO., BAYONNE, N.J. 07002 · FORM 740

A Not in this country.

Q Have you ever heard the name Anadolu Kontardi Tas?

A Yes.

Q A-N-A-D-O-L-U. Correct me if I'm wrong. K-O-N-T-A-R-D-I, Tas, T-A-S, Istanbul, Turkey?

A There was this company in Turkey.

Q What kind of business was that company involved in?

A They were exporting, importing and domestic trade. They were in business, basically.

Q Were they located physically in Turkey?

A Yes.

Q There are no automotive products involved in that?

A No.

Q In 1947 Fimex Corporation was formed. They were engaged in exporting automotive products?

A Fimex Corporation?

Q Fimex Corporation.

A Yes, we started automotive parts.

Q Where were you selling automotive parts in 1947?

A Turkey, of course. I cannot recall all the countries. We sold to a number of countries, but I can't

PENGELLY CO., BAYONNE, N.J. 07002 - FORM 740

recall. Possibly Brazil and there must have been other countries. I cannot pinpoint it exactly.

Q In 1947, where was Fimex located?

A 61 Broadway.

Q And was that an office building?

A Yes.

Q Did the company have any warehouse facilities at that time?

A No, sir.

Q How did you traditionally go about, just explain in your own words, taking care of an order that you may have gotten say from Turkey, for automotive parts?

MR. JAROSLAWICZ: I object to the form of the question. It calls for narative --

Q Go ahead.

MR. JAROSLAWICZ: No, let him ask the proper question.

Q Unless he direct you not to answer.

MR. JAROSLAWICZ: I direct him not to answer that question. It is calling for a narative.

MR. ROMANO: That objection is unfounded.

Q How did you process an order in 1947 for Fimex Corporation from a customer?

A Whenever we received an order from the customer,

PENGAD CO., BAYONNE, N.J. 07002 - FORM 740

I placed it with my sources of supply of that particular item.

Q And then once you got it --

A Then I would receive it from the source of supply and make the shipment to the customer.

Q Was that the usual way that you processed orders?

A In 1947, yes.

Q Did Fimex Corporation continue to sell automotive parts from 1947?

A Yes.

Q Between the periods 1947 to 1960, was Fimex Corporation still located on Broadway in New York City?

A Yes.

Q You still had no warehouse facilities?

A NOt their own facilities, no.

Q You continued during that period of time to process the orders the way you described them earlier?

A Yes.

Q You would get an order from a customer and you would place an order with a supplier and after you received it from a supplier you would ship it to a customer?

A Yes.

Q During this period of 1947 to 1960, were all of

PERSEID CO., BAYONNE, N.J. 07002 · FORM 780

your customers located in foreign countries?

A I don't recall, sir. Most of them.

Q 99 percent?

A I cannot say.

Q 95 percent?

A I don't know. I cannot recall.

Q Would it be fair to characterize your business during this period as primarily exports?

A Yes.

Q Was most of your business direct to the country of Turkey?

MR. JAROSLAWICZ: This is the period of 1947 to 1960?

MR. ROMANO: That is what we are talking about.

A Not necessarily. At times yes, at times no. It depends upon the season or the year.

Q Was the vast majority of your business in Turkey?

A Not necessarily.

Q What do you mean by not necessarily? Give me a ball park figure based on experience and as an officer of the company and what you know about the company and its pattern?

Q I can tell you for example, in the 50s, I don't know

PENGAD CO., BAYONNE, N.J. 07002 - FORM 740

exactly when, we used to ship substantially to Brazil.

Q Would you say it would have been over that period -- in Turkey and other countries?

A Possibly. I have no recollection.

Q What -- during this period of time 1947 to 1960, did you still operate as vice-president of the company?

A Yes.

Q Basically, what functions did you perform as the vice-president?

A I handled the purchasing.

Q Excuse me, I'm sorry?

A The purchasing, I handled the shipments, the correspondence, the contact with my suppliers, some traveling and other general office work.

Q Did you also handle contact with your customers?

A Some.

Q Who did most of that?

A My father.

Q Did your father also do most of the traveling?

A Some of it, yes.

Q Now, when you talk about contact with customers, did that involve receiving an order from a customer and maintaining good relations with the customer?

A Contact with the customer, I made by letter and

PENGAD CO., BAYONNE, N.J. 07002 · FORM 740

A Any and all that the customer wanted that I could sell to him.

Q So it all depended on what the customer ordered and you would go out and try to get it?

A That's right.

Q Now, did this, did your pattern selling from 1947 to 1960, did that continue beyond 1960? In other words, did you continue to sell automotive products after 1960?

A Yes, sir.

Q And did your business expand betwwen the period from '47 to '60?

A I would say so, yes.

Q How many employees, just give us a ball park idea, how many employees did the company have in 1960?

A I'm guessing. I don't recall exactly. I would say about four.

Q And can you describe their job functions for us, what they did?

A Secretarial.

Q Were they all secretaries?

A Four, that means my father and myself and the secretaries.

Q Your father and yourself actually handled the purchasing and sale part of the business?

PENGAD CO., BAYONNE, N.J. 07002 FORM 740

A I have a sales manager and I have clerical help, basically.

Q What does the sales manager do?

A He travels and he tries to sell.

Q Where does he travel to?

A To the Far East, to South America, to the Middle East.

Q And other than, other than your father and you, he is the only one that has any kind of sales functions?

A Yes.

Q Does you father -- is your father still active in the business?

A Yes.

Q You say that sort of hesitatingly?

A He is 86 years old. He still works.

Q He doesn't do that much traveling?

A No.

Q How long has it been since you have had the sales manager?

A Nine months.

Q You just took him on nine months ago?

A Yes.

Q And prior to that time throughout the history of the company you had no sales manager?

PENGAD CO., BAYONNE, N.J. 07002 · FORM 740

Corporation still in existence?

A Yes.

Q Is it still an active company?

A Not too active, no.

Q Let's go back to the period of 1960 and bring it up from 1960 to 1965 and we are talking about Fimex Corporation again. Was Fimex Corporation just selling automotive products at that time? 1960-today?

A Mainly, yes.

Q What other products did it sell?

A I cannot pinpoint but there might have been one or two sales of textiles. There could have been one or two other items, but I don't recall them. Mainly was automotive parts.

Q During this period of 1960 to 1965, were you still located in New York City, Broadway?

A In New York City, yes.

Q You still didn't have warehouse facilities of your own?

A No, I used public warehouse.

Q Do you recall when -- do you recall who your main suppliers were during this period of time?

A No. I don't have a main supplier.

Q Once again, in this period of time you were

PENGAD CO., BAYONNE, N.J. 07002 - FORM 740

1 getting an order from a customer and then you would go out
2 and try to fill that order by going to a supplier?
3 A Precisely.
4 Q Furing this period 1960 to 1965, were most of
5 Fimex's sales to the country of Turkey, to customers in
6 Turkey?
7 A On and off, possibly.
8 Q What do you mean "on and off"?
9 A It depends upon the season. There are times
10 when sales in Turkey slow down so during a month of April
11 for argument sake, we are much stronger in Columbia. Two
12 months later we are 100 percent Turkey.
13 Q But overall, if you took the whole period of
14 time, five year period, 1960 to 1965?
15 A To a great extent it would be Turkey.
16 Q What do you mean by "great extent"? Again,
17 based on your experience in the company give me a ball park
18 figure, if you can?
19 MR. JAROSLAWICZ: You don't have to guess. If
20 you have a reasonable operation?
21 A I would say 75 percent, 80 percent, 75 percent.
22 Q In your case, I don't think you're guessing.
23 You're experienced in the company, I think you know.
24 A It is very difficult when handling spare parts
25

to have statistics. We don't know statistics in the small companies. I cannot know these facts by heart.

Q All I wanted was a ball park idea and I think you gave us a fair ball park figure. During this period you didn't have a sales manager?

A No.

Q Would it be fair to say that during this period 1960 to 1965, all your sales were to customers located in foreign countries?

A Mostly.

Q What do you mean by "mostly"?

A I think we have sales in the domestic market too, but mostly they were exported.

Q What do you mean by "domestic market"?

A U.S.A.

Q What kinds of customers?

A Any customer who pays for his purchase.

Q Give me an idea of the type of customer? Would it be another exporter?

A It could be, yes.

Q Now, would that work, for instance, if -- strike that.

Let's go from period 1965 to 1970. Once again, during this period of time you were still located in New York

City on Broadway?

A I think toward the end of that period we had already moved to Long Island. Sometime between '65 and '70. I have to check my records.

Q There is something here you can look at real quickly and determine --

A No.

Q Is that when you moved to Syosett or Westbury?

A We moved to Westbury.

Q You had an office in Westbury?

A Yes.

Q Did you have any warehouse facilities at that time?

A Yes.

Q What kind of warehouse facilities did you have?

A We had about seven thousand square feet.

Q Ten thousand square feet?

A Seven thousand square feet.

Q During this period of time 1965 to 1970, what kind of products was Fimex exporting?

A Again, spare parts.

Q Primarily spare parts?

A Primarily spare parts.

Q Once again, did you continue the pattern of

1 receiving an order from a customer and then going out and
2 filling it?
3 A At the beginning and then the pattern started
4 to change.
5 Q During this period, 1965 to 1970, who were
6 your main suppliers?
7 A Again, sir, I have no main suppliers. There are
8 various and sundry suppliers from whom we buy.
9 Q Just give us a description of the types of
10 suppliers that you would normally use?
11 A Chrysler Corporation, Dana Corporation,
12 Barmatic, Elgin Machine, and many more.
13 Q What would you buy from Elgin Machine.
14 A King bolt sets.
15 Q What are they used for?
16 A For the front axle of the trucks and cars.
17 Q What kind of products would you from Dana?
18 A Gaskets, rear axle material, clutches, useful
19 joints, piston rings, and all the lines that Dana has.
20 Q Any automotive spare parts?
21 A No.
22 Q Did you buy tie rod -- did you buy automotive
23 or truck steering parts from companies other than Barmatic
24 during this period of time?
25

A Possibly.

Q Could you describe those companies for me?

A Chrysler, GM parts would have it, Ford, International Harvester, Dana --

MR. JARMAN: You brought from Ford Motor Company?

THE WITNESS: No, we would buy from a Ford distributor of the Ford Motor Company.

MR. JARMAN: Did you buy from Chrysler?

THE WITNESS: Yes.

MR. JARMAN: From GM?

THE WITNESS: At that certain time, yes and no.

BY MR. ROMANO (Cont'd):

Q During this period of time, 1965 to 1970, you were buying automotive and truck steering parts from other suppliers other than Barmatic?

A Barmatic does not supply the full range.

Q What do you mean they don't supply the full range?

A They don't manufacture all the applications that are required from customers.

Q They are short --

A To some extent.

Q Do you know how many items there are in the automotive and trucks steering parts?

Q You purchased directly. Earlier you indicated when you purchased from Ford you bought through a distributor?

A Yes, sir.

Q What do you mean "a distributor"?

A A Ford distributor.

Q Is it a warehouse distributor or jobber or dealer?

A It is the official distributor of the Ford Motor Company.

MR. JARMAN: You know the name of that distributor?

THE WITNESS: There have been various.

Q During this period, 1965 to 1970, did you primarily order in bulk quantities when you made an order?

MR. JAROSLAWICZ: From who?

Q From a supplier?

A What do you mean bulk?

Q Well, did you buy them so they were packaged as a group of items?

A I don't understand.

Q Forget that question. Let's take the situation where you received an order from a customer. To fill that order how did you go about physically doing it?

A First of all, that has to be broken down as to

what type of parts he wants, what brands he accepts. We have then to submit a quotation as to what we can offer him. If he accepts our quotation, then we are going to go out and purchase according to his requirements.

Q When you purchase according to his requirements, how did those products come to you? Do they come directly to you?

A Sometimes.

Q Other times how would it work?

A They would go directly from the manufacturer to the pier.

Q Then be loaded on the boat?

A And then be loaded.

Q So that whichever way the manufacturer packaged them or boxed them, that is the way they would end up going to the customer?

A In certain cases.

Q Do you have any catalogues, Fimex catalogues?

A No.

Q You don't have your own catalogue?

A There is no Fimex catalogue.

Q Do you have any sales representatives located in foreign countries?

A Some, yes.

Q Can you tell me where?

A We have one in Columbia. We have had in the Philippines, but they are on an on and off appropriation.

Q What do you mean?

A In the Philippines we would use him for three years and we won't use him. If we were not satisifed with him we wouldn't have a sales representative.

Q Do you have any sales representatives in the U.S.?

A No, sir.

Q If you don't have a catalogue, how do you go about making, when you're filling an order, how do you go about letting the customer know what your supplies prices are going to be?

A On the basis of parts numbers.

Q Do you send some kind of a separate statement with it which mean what the parts and what the prices will be?

A Yes.

Q Ordinarily what are your terms of sales to a customer?

A Letter of credit.

Q How does that work?

A We receive a commitment from a U.S. bank that they would pay us upon submitting shipping documents, according

to the stipulated conditions of that letter of credit.

Q So he, the customer, arranges for the letter of credit with an American bank?

A Yes, sir.

Q When he receives these shipments, the documents reflecting shipment are sent to the bank and the bank knows when to pay you?

A We present it to the bank.

Q You present it?

A And the bank pays us here.

Q What bank is that?

A Any bank.

Q It can be any bank?

MR. JARMAN: You always do it that way?

MR. JAROSLAWICZ: I object to this procedure. We have one man asking the questions.

MR. JARMAN: I'll be quiet. Strike that.

Q During this period, 1965 to 1970, what were your annual sales, what were your annual sales volume?

A Probably a million and a quarter or thereabouts.

Q Did that increase from 1965 to 1970?

A Yes. That tendency has been up.

Q Can you give us an estimate of what percentage that has increased?

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MR. ROMANO: Produced two certificates of incorporation. One for Fimex Corporation and one for Titan American Corporation, and you will also produce the buy laws of both of these corporations in response to that request.

The second category of request were all annual reports of Fimex Corporation.

MR. JAROSLAWICZ: We have no annual reports. We have produced balance sheets.

MR. ROMANO: These are all copies.

MR. JAROSLAWICZ: These are the only manner in which we have them. You are free to copy them.

MR. ROMANO: Okay. Pursuant to that request, you have produced balance sheets, documents entitled "Balance Sheets," as of December of each year for the years 1966 through and including 1975.

Now, our third request involves all documents including not limiting to certificates by agents or transportation representatives of export carriers', certificates of lading of Customs' officers and sworn statements from purchases of export setting forth or reflecting to sales by Fimex Corporation of all of the products purchased from Barmatic Products Company and in response to that request, you have produced 26

1 folders which include all that you could find of the
2 documents that we requested.
3 THE WITNESS: Yes, sir.
4 BY MR. ROMANO (Cont'd):
5 Q And basically just to identify these folders,
6 the folders are folders which actually reflect shipments
7 of products which include products that you purchased from
8 Barmatic that you have made from approximately 1969 to the
9 present?
10 A Yes, sir.
11 MR. JAROSLAWICZ: With regard to these documents,
12 we have produced our originals and advised counsel
13 off the record, we have no objection to counsel viewing
14 them. We would like, however, that no copies be made
15 of these documents which would indicate the name of
16 Mr. Cohen's customer. We have no objection to the
17 country being copied, but we don't want the customer's
18 name and address on the records.
19 Before any copies are made, we would like the
20 customer's name deleted. In addition, if possible,
21 we would like to delete the prices and automotive parts
22 that appear on these invoices that have nothing to do
23 with Barmatic on the ground that it is highly
24 competitive. Although counsel in good faith would
25

preserve it.

Documents, documents once released would get about and would endanger the life line of our business and accordingly, we would ask that arrangements be made that the copies of these documents were without the specific names and addresses of customers. We are, however, agreeable to leaving the name of the country.

MR. ROMANO: At this point for the purpose of the record, I submit that we can agree to go ahead with a protective order that would limit access to these documents or copies of these documents to attorneys of record, or directly participating in the case and to no one else and that we would be willing to stipulate to such an order and to get the judge's issuance of such an order. However, at this point, all I want to do is identify the documents so that we know what we received.

BY MR. ROMANO (Cont'd):

Q These represent, just to make it sure for the record, these folders represent all the records in your files you could find that reflect the actual shipments of products that you purchased from Barmatic's Product Company?

A Yes, sir.

Q And you could find no other evidence?

A I didn't find any other.

Q Of shipment of sales of Barmatic Products?

A That's right.

Q These go back to approximately 1969 and carry foward into 1976?

A '76.

MR. ROMANO: The fourth category of request, requested all documents setting forth reflecting or referring to statistics of Fimex Corporation and any of its subsidiaries or affiliated corporations as domestic international sales corporations under a federal tax laws.

MR. JAROSLAWICZ: We have produced a letter electing to ask a discorporation.

BY MR. ROMANO:

Q This is a copy?

A Yes.

MR. ROMANO: I would like to have this marked as Cohen's Deposition Number One.

(Marked for identification, Cohen's Exhibit Number one. Letter dated March 16, 1972.)

Q Mr. Cohen, I'm going to hand you what has been marked as Cohen's Deposistion Exhibit One, and it is a copy of a letter which was sent to the Internal Revenue Service

1 Center in Andover, Massachusetts. Although this copy doesn't
2 have your actual signature, it appears that the original was
3 signed by you, Mr. Cohen, as the vice-president of the
4 Fimex Corporation?
5 A Yes, sir.
6 Q It is dated March 16, 1972?
7 A Yes, sir.
8 Q Would you look at that and tell me if that is
9 a request by you to the Internal Revenue Service to be treated
10 a domestic international sales corporation?
11 A Yes, sir.
12 Q To qualify as a domestic international sales
13 corporation, what were the requirements at that time in terms
14 of your export sales?
15 MR. JAROSLAWICZ: I object.
16 A None.
17 MR. JAROSLAWICZ: That is set forth for the IRS
18 code of regulation. You're asking a layman to
19 interpret the tax laws.
20 Q What was the purpose of this request?
21 A The purpose of this request was to indicate our
22 intentions to be treated under the new laws of the discorporation
23 setup.
24 Q What did it mean to the company in terms of tax?
25

A There was a deferal of part of the tax.

Q Were you granted your request?

A Yes, sir.

Q Are you a discorporation today?

A Yes, sir.

Q And you have been since 1972?

A Yes, sir.

Q Do you recall a requirement that 95 percent of your sales had to be in export trade to qualify as a discorporation?

A Yes. I know there is a certain percentage. I don't know exactly the percentage, but I know there is a certain percentage.

Q You complied with that percentage?

A Yes, sir.

Q You currently comply with that percentage?

A I think so, yes.

Q When you requested treatment as a discorporation, did you submit any other information to the Internal Revenue Service other than what you have submitted here this morning? This letter dated March 16, 1972?

A I don't know, sir, because our accountant would take care of these matters.

Q Did you have to sign anything else?

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A Probably. Whatever he tells me to prepare.

Q Who is your accountant?

A Mr. Sobly.

Q Where is he located?

A New York.

Q Would you tell us his name?

A B.L.Y.

Q When you say New York, you mean New York City?

A Yes, New York City.

MR. ROMANO: The next category of the document requests was all documents setting forth reflecting or referring to geographical locations in which Fimex Corporation and any of its subsidiary or affiliated corporations, counsel, -- automotive products.

MR. JAROSLAWICZ: There is no such document except all of our invoices wherever we made a sale and if you want to look at those, they will be voluminous and almost impossible to transport.

Q Well, Mr. Cohen, do you have any kind of a brochure or catalogue that you send out?

A No, sir.

Q Any advertising? Did you advertise at all?

A Yes.

Q Where do you advertise?

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A In the Automobile International.

A What kind of magazine is that?

A Automotive trade magazine.

Q And who are the people that subscribe to what did you call it?

A Automotive International.

Q Who are the people that get that magazine?

A I imagine anybody in the automotive trade.

Q Do you have that advertisement with you?

A No.

Q Does it describe the nature of Fimex's business, the ad?

A We have a square box that says "Fimex Corporation," and the items that we would like to advertise. At times we advertise jeep parts. Other times we advertise Chrysler products, gears. It goes all over the world.

Q Is this the only international automotive trade magazine there is?

A I imagine there might be others.

Q Does this, is this particular magazine geared to the international business?

A It is.

Q Is that why you advertise in it?

A It is, yes.

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Q The next category of documents, all export licenses authorizing Fimex Corporation to export automotive parts that has been filed at U.S. Department of Commerce Export Administration or all of its various departments?

A There are no license requirements.

Q That is why you have not produced any?

A That is why we have not produced any.

MR. JAROSLAWICZ: We have also produced all our invoices from Barmatic, not being sure what category you wanted them but we assumed you wanted them.

MR. ROMANO: You have. Folder "Barmatic Products," and there is invoices and there is no date.

Q Let's go back to the period 1970 to 1975.

A Yes.

Q During that period of time, did Fimex continue its pattern of selling automotive products?

A Yes.

Q And at that time you had indicated earlier that you had developed warehouse facilities of your own?

A Yes, sir.

Q Did you move during this period of 1970 to 1975?

A Yes, sir.

Q Did you move from Westbury to Syosett?

A Yes.

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A I would guess that that fluctuated between a million and a half to probably two and a quarter, two and a half. It depend upon the years.

Q But it steadily has increased?

A Yes.

Q Getting back to what we discussed earlier, during this period of time, 1970 to 1975 and continually in 1972, you applied for an agreement as a domestic international sales corporation; is that correct?

A Yes, sir.

Q And you have maintained that statis to date?

A Yes, sir.

Q And you fully complied with all the requirements?

A Yes, sir.

Q If I told you one of the requirements was that 95 percent of your gross receipts --

MR. JAROSLAWICZ: Would you indicate where you're reading from?

MR. ROMANO: I'm reading from the Internal Revenue Code. Section 994 of Section 26.

Q Had to be export receipts, your company met that requirement?

A Yes.

Q So during this period of time, 95 percent of

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your sales were in export trade?

A Yes, sir.

Q If not all of your sales --

MR. JAROSLAWICZ: Objection. You want to ask if all of his sales were in export you can ask him. I object to the form of the question.

Q Were all of your sales export sales at this time?

A No, sir.

Q What did you sell domestically?

A Spare parts.

Q What kind of spare parts?

A Any spare parts that I could.

Q Do you advertise your company in any of the trade magazines other than the trade magazine you mentioned before?

A No, sir.

Q Are you aware of trade magazines that are generally available in the automotive market?

A Yes, to some extent.

Q There are a number of such magazines?

A Yes, there are.

Q You don't advertise in any of them?

A No, sir.

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Q Again, going to the period of 1970 to 1975, did you have any sales representatives in the U.S.?

A No, sir.

Q Did you have any catalogue?

A Not of Fimex, sir.

Q During this period of time, how many -- strike that.

Now, getting back to the 23 folders that you produced which showed the shipment -- which show the shipment of products that you purchased from Barmatic.

A Yes, sir?

Q This reflects all the documentary evidence that you have of sales of Barmatic Products?

A That I could find up to the present time, yes.

Q Could you tell from looking at each folder, where the product went?

A Yes.

Q Let's give you the first folder?

A This merchandise went to Turkey.

Q I will give you the second folder?

A This merchandise went to Turkey.

Q I will give you the third folder?

A This merchandise went to Turkey.

Q I will give you the fourth folder?

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A This merchandise went to Turkey.

Q I will give you the fifth folder?

Just for the record, Mr. Cohen has reviewed all the other folders and can you tell me, Mr. Cohen, now having reviewed all the other folders, do they all reflect shipments to what designature, sir?

A To Turkey.

Q So all the documents that you produced this morning that show the actual shipments of products that you purchased from Barmatic were actually shipped to the country of Turkey; is that correct?

A Yes, sir.

Q You have no other documents that you know of that reflect shipments to any other place; is that correct?

A Not at the present time that I could find, no, sir.

Q Having reviewed those folders, can you tell us whether in all 26 situations covered by those folders, whether Fimex followed the traditional pattern of its sales and received an order from its customer, then turned around and found a supplier to fill that order?

A No, not in all cases. In a great many, yes, but not all.

Q What do you mean a great many?

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A In the majority of these particular cases.

Q Can you identify those instances where it didn't occur?

A I could.

Q Would it be one, two --

(Witness handing document to Mr. Romano.

MR. ROMANO: Off the record.

(Discussions off the record)

A I will express to you, it takes me sometime. Not today. I will give it to you by tomorrow. It will take me some time to discover that.

MR. JAROSLAWICZ: He has to go into each invoice to see what he had on stock.

A I have to go through the list of each item.

MR. ROMANO: All right, we can skip that for the moment.

Q Now, going back to the period of 1960 to the present, 1976; let's take 1976, could you tell us approximately what was the average annual purchases from Barmatic?

MR. JAROSLAWICZ: We have the invoices here.

A I'm going to guess it was in the vicinity of $15,000. a year. I'm guessing though.

Q Now, would that apply to the period 1960 to 1968?

A Probably not. As time went on we possibly

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1 increased our purchases.

2 Q So that during the period 1960 to 1968, your

3 sales could have been as low as --

4 A $10,000. or $5,000. It is a complete guess. It

5 could be found out from a statistic.

6 Q Let's get back to these 26 folders. Ordinarily

7 with respect to the shipments of these products, who arranges

8 for the freight, who takes care of the freight costs?

9 A Please clarify? What do you mean by freight?

10 We have ocean freight, we have trucking freight, we have

11 inland freight.

12 Q The freight to get it to Turkey from the pier?

13 A The customer pays for that.

14 Q The customer in Turkey?

15 A Yes.

16 Q Will pay for it?

17 A Yes.

18 Q Is that traditional in the export business?

19 A Nothing is traditional. There can be sales that

20 include the ocean freight, too. It depends upon your sales

21 conditions.

22 Q Let's take Fimex for instance. Is it traditional

23 with Fimex that the customer always pick up the freight?

24 A Yes, sir.

25

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Q Getting back to those 26 folders, were you able to find any evidence in your records of a sale by Fimex of products purchased from Barmatic to a customer in the United States?

A No, sir.

Q Did you look hard for it?

A Yes, sir.

Q You spent a great deal of time trying to find one?

A I spent days.

Q You couldn't find one?

A No, sir.

Q So ab best as you can determine, based on your search, none of the products that you purchased from Barmatic was sold to customers in the United States; is that correct?

A No, sir.

Q No, sir, what?

A No, none of the products were sold in the United States.

Q They were all exported?

A Or else they are still in my warehouse.

Q What is still in your warehouse?

A Some of the products of Barmatic.

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Q Did you look at those products recently?

A Yes.

Q What are they?

A Tie-rod ends.

Q Are they the ES140L?

A Some of them are, I think so.

Q How many are there?

A By December 31, 1976, I think there were 500 odd pieces.

Q There were 500 ES140Ls?

A Yes, or thereabouts.

Q Do you know when you purchased these?

A Yes.

Q When?

A These items, the last time -- which bought these purchases were January 8, 1974 and February, 1975.

Q So that these 500 ES140Ls could have been the leftovers from either of those purchase orders?

A Yes, sir, they are. There were more.

Q Excuse me?

A There were more leftovers. But December 31, I had 500 odd pieces.

Q They could have come from either purchase order?

A Yes.

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Q Do you know which one they came from?

A No, unless I investigate our other records to find out.

Q What other records would you investigate?

A As to where the other merchandise might have gone and where they came from. For example, I keep a small piece of paper of inventory.

Q Would you have that record for those orders?

A Not here, no.

Q Would you have that?

A I should have something.

Q Would you agree to provide that to us?

A Yes.

Q Is this in some kind of specialized code or handwriting that only you can understand?

A No, it would simply be a reflection of my memory as to what happened to that specific lot and then I can make a statement to you that that merchandise went in such a direction or stayed here for some months or whatever it is.

MR. ROMANO: I'm going to request that that be made available with respect to the ES140Ls, the tie-rods that you have in your warehouse and if you can make that available within the next day or two, or we can have that attached as an exhibit.

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THE WITNESS: The next day or two would be Monday or Tuesday.

MR. ROMANO: And we will have that attached on to the deposition as Cohen's Deposition Exhibit Number Two, and I think that has been properly identified as a document which you maintain as aprt of --

THE WITNESS: It would be a statement of mine.

BY MR. ROMANO (Cont'd):

Q At this point, you haven't made a judgment, you are unable to determine whether the tie-rods we are talking about, the ones in your warehouse, came from the purchase order on which you made February 1, 1975, or the one that you made on January 29, 1974?

A No, I cannot determine that.

Q Did you make an attempt to determine it before you came here today?

A No, sir.

Q Can you tell us approximately how much you paid for those tie-rods?

A Yes, sir.

Q I'm talking about the 500? Either per item basis or by lot?

A I paid in 19 -- February, 1975, I paid $2.63.

Q When you say $2.63 --

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A Per piece. And with my order of February, '74, I paid --

Q I think you said January of '74?

A My order is January. It shows on Barmatic invoices as having been entered in February, '74, which is formal. Let's say beginning of '74, I paid, I was billed at $2.10 per piece.

Q They are the only Barmatic products that you have in your warehouse?

A At the present time I probably have a few other items.

Q But this is what you have identified as being in your warehouse which are the ES140Ls?

A As of December 31, 1976.

MR. JAROSLAWICZ: He also said there are other items in addition.

Q Ordinarily, let's get back to this period again, 1965 to 1975. Let's spread it out. After you have gotten an order from a customer and you go to a supplier to fill that order, did you normally request that that order be placed in certain kinds of cartons?

A At times.

MR. JAROSLAWICZ: I object to that question as indicating that Fimex operated solely by placing

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Q Does that reflect an order from you to Barmatic for a product?

A Yes, sir.

Q And do you know or could you recognize the initials?

A These are my initials.

Q They are your initials?

A Yes, sir.

Q And that was part of your responsibility in the company, was to handle the purchases of Fimes, is that correct?

A Yes, sir.

Q Now, if you notice in that document, under the heading marked, it says Fimex OTO Istanbul, 5507/1 and up?

A Yes, sir.

Q What did you intend by that mark?

A These are the marks that I like to have appear on these particular cartons that were going to come in.

Q Was that because they were to go to Istanbul?

A Perhaps, but part could have been to Istanbul and the other part could have been stock and the other part to Columbia.

Q Those were the marks you would put on the cartons?

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of the shipment, for example, consists of 23 cartons.

Q Okay. In your statement I would like you to identify at least the documents that you rely on to make this determination.

A Oh, yes.

Q Now, earlier we talked about Fimex being a domestic international sales corporation?

A Yes, sir.

Q Could you tell me for 1970 to 1975, what customers you sold automotive products? I am talking about automotive products generally, in the United States?

A Yes, I could locate the names of the various concerns to whom I sold automotive spare parts, yes.

Q In the United States?

A Yes, sir.

Q Could you also identify them?

A What do you mean, identify them?

Q Tell us who the company is?

A Oh, yes.

Q Are there many of them?

A There are a number of them.

Q How many?

A I don't know, sir .

Q Let's take a year, let's take one year, 1970?

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A I wouldn't know at all. I can dig them up. I can find them. I can give you the exact amount and numbers.

Q Can you identify what type of customer they were?

A What do you mean, type of customer?

Q What kind of business they were involved in?

A The automotive parts business.

Q Were they wholesalers, distributors?

A Yes.

Q Who did they sell to?

A I don't know.

Q Can you tell me what kind of company Bobro Company is?

A They are a distributor of auto parts.

Q Are they what is normally referred to as a warehousing distributor?

A Yes.

Q Do they represent any particular manufacturer, do you know?

A I don't know whether they represent but they carry the lines of various manufacturers, yes.

Q Are they a full line distributor?

A What do you mean by full line?

Q Did they carry a full line of automotive parts?

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A I don't know.

Q Do you know whether they buy from Moog Industries?

A Very possibly. Very possibly.

Q Have you ever sold them any automotive parts?

A No, no, sir.

Q Have you ever sold any automotive parts to Elgin (Phonetic) Company?

A No, sir.

Q Have you ever sold any automotive parts to Guity?

A Oh, yes.

Q More than once?

A Yes, more than once.

Q Is Guity an exporter?

A Yes.

Q If you recall, in the affidavit that you submitted, which was attached to the opposition to our motion for summary judgement, you supplied an invoice on the Fimex letterhead to, which reflected a sale by you to Guity. Now, none of the products involved in that sale were Barmatic products, is that true?

A That's correct.

Q They were all the products of other suppliers?

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A That's correct.

Q And as it indicates, the products that you sold to Guity were for export only; is that correct?

A Yes, he was exporting them.

Q Were they exported to Iran?

A That's right, sir.

Q Did your invoice also reflect that it was shipped to a destination contractor to the destination; does that indicate it would be a violation of U.S. law?

A Diversion law in U.S. law is prohibited.

Q It does indicate it?

A Yes.

Q Attached to that affidavit, you also had an invoice on the Fimex Corporation letterhead to Glen Truck Sales and Service, Inc.?

A Yes.

Q None of the products on that invoice are Barmatic products, is that true?

A That's correct, sir.

Q What is Glen Truck Sales and Service, Inc.?

A A distributor of trucks and spare parts, personalized in International Harvester applications.

Q So most of the products are International Harvester products?

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A Applications, yes.

Q Do you know if Glen Truck has an export sales division?

A I don't know.

Q Other than this one sale which is reflected in this invoice which is dated June 13, 1972, have you ever made any other sales to Glen Truck Sales?

A Yes, sir.

Q Do you know how many?

A Not offhand, but on and off we did sell them.

Q Now, going to the third invoice which is an invoice dated February 28, 1975 to Perfection American Company and none of the products on that invoice are Barmatic products, is that true?

A That's correct.

Q What kind of a company is Perfection American Company?

A They manufacture and distribute various types of autoptive spare parts.

Q Can you tell me on that invoice it says sales tax for resale, what does that mean?

A In case there is a sales tax in South Carolina, I have to have an exemption certificate for them not to charge them extra sales tax, local domestic sales tax.

Q Can you give us an idea of what percentage of your sales of all the products that Fimex sells was sold to customers located in the United States?

A It must be 5 percent.

Q Why do you say it must be 5 percent?

A Because there is a something which I qualify and if you tell me it is the 95 percent that I must qualify, it must be 5 percent.

Q You can qualify and be 100 percent?

A I don't know.

Q Have you ever made an attempt to figure it out?

A No, sir.

Q Why is that?

MR. JAROSLAWICZ: Objection to the form of the question. I don't understand it. Why is what? Why he has made no attempt to figure what percentage of his sales are in the United States?

Q What percentage of your sales is in the United States?

A It is of no real concern to me.

Q Now, was it your responsibility when you ordered products from a supplier, which were not subject to excise tax, to submit a sertificate of export to that supplier? Was it your personal responsibility?

12

A I would supervise it, yes.

Q Would you sign that letter that went to the supplier?

A We have a form that most probably in a number of cases was already presigned.

Q Presigned by you?

A Yes, sir.

Q I'd like to go back to Deposition Exhibit 4 and have you look at the marks where it says Fimex OTO Istanbul. What does that mean?

A This is a mark to distinguish various shipments.

Q What does OTO stand for?

A In Turkish it means automotive. Auto.

Q What does SUP mean?

A It stands possibly for the initials of a specific customer.

Q Could OTO be initials of a specific customer?

A Not in and of itself. In other words, OTO means auto. A-U-T-O.

Q Would there be -- is OTO a specific customer?

A There would be many customers with OTO with the company name.

Q What is SUC?

A It would be an initials of a customer.

Q Based on your knowledge?

A It is --

Q What is OTO Ismir?

A Again it's a distinguishing mark. It's not a name of a customer.

Q What about AV Ismir?

A This is the initial of a customer.

Q SUV?

A Yes.

Q KTK?

A Possibly the initials of a customer, yes.

Q What if you had OR?

A Probably an initial of a customer.

Q Is there any reason why when you requested that the marks be placed on the package that in some instances you would put the specific initials of a customer in contrast to just putting, as you said before, OTO?

A Yes, it's very possible that this is not a very specific order so that we are putting some sort of a blanket initial in order to later on send it to customer A or customer B or put it in stock.

Q But in those instances where you have the specific initials, a customer, that is where it was going?

A Most probably.

Q Almost a complete certainty?

A Not necessarily.

Q 99 percent of the cases?

A It's difficult to qualify by percentage. Okay, let's say the majority of the cases, yes.

Q A substantial majority of cases?

A A substantial majority.

Q In fact, it would be an extremely unusual instance where you put the specific initials on and didn't end up going to that specific customer?

A No, sir, it's not so.

Q In those instances where you did use OTO, was that basically as you indicated before a reflection using a general term, that it might be going to one or several customers?

A Yes.

Q Why would you put destination Istanbul? Just to get back, when you used a destination OTO you use a general designation because you may have been sending an order to more than one particular customer?

A In certain cases, yes.

Q Those customers would be located wherever you indicated-- like Istanbul?

A Not necessarily.

Q Why did you put Istanbul down?

A Because we have to put something down. As a distinguishing feature. We have to have it for the warehouse.

Q Why didn't you put numbers down?

A In some cases we do.

Q Why didn't you put numbers down on this?

A I don't know in that particular case.

Q It's your responsibility?

A That is no meaning why I did or didn't put it. I don't remember what I did in 1973 to decide why Istanbul. Perhaps at that time I was handling all Istanbul shipments so I would put Istanbul. You must realize that these shipments come directly to my warehouse.

Q But is it a good indication some of the time you submitted a purchase order that the shipments were going to go to Istanbul?

A Perhaps yes, partly yes and partly no. Perhaps half of the merchandise, perhaps only 10 percent or perhaps none of them, depending upon the order that I was placing at that very moment.

Q Do you carry as many automotive parts as a company like Bobro Products does?

A I don't think so.

Q The range of parts like a company Bobro Products

16

carries?

A I don't know but my impression is that I don't think so.

Q Is there a wide difference between the lines that Bobro Products carries and what you carry?

A There should be, yes.

Q Why should there be?

A Because they have a much greater expansion to that type of trade and great many customers than I have.

Q In what sense?

A They have garages I imagine, and repair shops systems which I don't.

Q What other kinds of customers do they have that you don't have?

A I don't know, sir.

Q They would carry a much greater number of lines would they also carry a much greater amount in inventory than you carry?

A I don't know, sir. I never check that.

Q Has Firex ever held itself out as a company?

MR. JAROSLAVICZ: As what?

Q Has Firex ever held itself out as a company other than one primarily engaged in export? Have you ever advertised yourself as anything other than a company that is

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1 engaged in export trade

2 A Advertise, no. I don't advertise. I advertise

3 very little, sir.

4 Q Has the company ever held itself out to the

5 world generally as other than a company that is engaged in

6 exporting?

7 A Timex has held itself out as a company in

8 business. Trading, buying, selling.

9 Q When you submit a statement to the Internal

10 Revenue Service that shows that 95 percent of your sales are

11 export?

12 A If that particular year it was 95 percent and

13 the accountant so decides, certifies that it is, yes we

14 specify that we are 95 percent in the export business.

15 Q Haven't you done consistently from 1975 to today?

16 A Yes.

17 Q Haven't you held yourself out as a company

18 primarily of export trade?

19 A No, we are certifying to Internal Revenue that

20 our sales have been primarily export.

21 Q 1972 was the first time you filed, is that right?

22 A I think so. 1972, yes. It was the first year.

23 Q So since the first time it became applicable,

24 you held yourself out as a company --

25

MR. TARGISHICK: I object to the term, holding himself out. Mr. Cohen answered many times that if he qualifies under D.T.C.C. he sells to anybody.

A In that particular year, if I have 95 percent or over I qualify in the D.T.C.C.

Q You have had that consistently since 1972?

A Yes I did.

MR. DOMANO: Mark these as Cohen Deposition Exhibit 5 for identification, 10 pages.

(So marked.) (Cohen Deposition Exhibit 5-A through 5-J.)

Q Mr. Cohen, I will hand you what has been marked Cohen Deposition Exhibit A through and including 5-J. They are balance sheet statements on your letterhead Timex Corporation and they cover the years 5-A 1975; 5-B, 1974; 5-C, 1973; 5-D, 1972; 5-E, 1971; 5-F, 1970, 5-G, 1969; 5-H, 1968; 5-I, 1967; 5-J, 1966. I will show these to you and are these the balance sheets of Timex Corporation for the years covered?

A Yes, sir.

Q These are all the balance sheets that you had in your possession?

A Yes, sir.

Q Do they accurately reflect the financial standing of the company as of the dates they were issued?

A Yes, sir.

Q Did you prepare those?

A No.

Q Who prepared those?

A Our accountant.

Q Did you participate in the preparation of those documents?

A Not in the preparation, no, sir.

Q Did he consult with you as to the information reflected in them?

A Certainly, certainly.

Q They were prepared by your accountant?

A And we typed them on our stationery.

Q Do you have any other financial records that reflect the status of the company? As of the dates refelected in these documents?

A We have our books.

Q The backup material for these financial statements?

A Yes, obviously, yes.

Q But you don't have any other kind of balance sheet other than the ones you have here?

A We don't issue balance sheets or statements, as you call them.

20

Q Just to be clear on the record, earlier I requested you to identify for the period 1970 through and including 1976 the customers whom you sold automotive parts generally that were located in the United States?

A Yes, sir.

Q You agreed to provide that information?

A Yes, I did.

MR. JAROSLAWICZ: That is territorial United States Puerto Rico and its territories?

MR. ROMANO: In the United States would be fine, within the United States.

MR. JAROSLAWICZ: Without any sales to people in Puerto Rico?

MR. ROMANO: If he's got sales to Puerto Rico, include them too.

Q In your affidavit, that you submitted in opposition for summary judgement, you included 3 invoices. Why did you only include 3?

A These were the ones I could put my finger on quickly.

Q Did you make an attempt to search your files for others?

MR. JAROSLAWICZ: It was my decision as to how many we would submit. We agreed to provide you with

2 with the names of our customers.

3 MR. ROMANO: I am also going to request the

4 invoices.

5 MR. JAROSLAWICZ: We will take that under

6 advisement. They weren't asked for but we will do our

7 best to locate them. If we locate them, we will provide

8 them to you.

9 MR. ROMANO: I have no further questions at this

10 point, but I would like to make it clear for the

11 record that the purpose of this deposition was directed

12 primarily and only for the motion for summary judge-

13 ment and we reserve the right to take Mr. Cohen's

14 deposition in the future.

15 MR. JAROSLAWICZ: I disagree with that. Mr.

16 Cohen is examined here. Although the judge directed

17 this deposition be taken for the purpose of determining

18 whether or not Mr. Cohen purchased any merchandise

19 from Barmatic to be sold to customers within the

20 United States, or any of its territories, the defend-

21 ant has deliberately apparently refrained from asking

22 any questions going directly to the heart of that

23 issue and skirted the issue and asked peripheral

24 questions rather than simply asking him, the plaintiff

25 who is here by Mr. Cohen, as to when he purchased

22 1

2 materials from Barmatic intended for resale within the
3 United States, whom they were intended for resale to,
4 whether or not they were resold or what happened to
5 them. Since that is the issue, Judge Platt directed
6 us -- deposition to take place -- , we are here, we
7 are prepared to answer any questions you have. If you
8 decide not to ask those direct questions in an attempt
9 to draw inferences from peripheral questions, some of
10 which will no doubt be misleading, I want the record
11 to be clear that if those direct questions were asked
12 you would have proper responses and if you don't wish
13 to ask them, that is your privilege.

14 MR. POLANO: Other than the fact that Mr.
15 Jaroslawicz is attempting to testify on his own behalf
16 rather than have his own witness testify, I would like
17 to make it clear for the record that the specific
18 purpose of this deposition as directed by Judge Platt
19 was to give Mr. Jaroslawicz and Mr. Cohen an opportunity
20 to show actual sales in the United States of products
21 purchased by Barmatic. With respect to that specific
22 question, that specific question has been asked. The
23 invoice materials to supply that information has been
24 provided and let the record reflect that there are no
25 sales in the United States to any domestic customer

23

by Firex of products that it purchased from Barmatic. That was the purpose and that is the most specific question and only question that was focussed on by Judge Platt. We have asked that question. And it's been answered and it's been answered clearly on the record. That question --

MR. JAROSLAWICZ: That question, Mr. Romano, was asked and answered before the Judge and Mr. Cohen's affidavit states that we never did sell Barmatic Products in the United States because we were unable to because of the prices. As we did purchase products from Barmatic that were to be resold in the United States and due to the discriminatory price, we were unable to sell them.

MR. ROMANO: Mr. Jaroslawicz --

MR. JAROSLAWICZ: You could have gotten a stipulation. I would like to make my statement for the record. Rather than waste time with a deposition, I stated to the Judge in open court that Fimex had not sold or resold any Barmatic products within the United States. If you read his affidavit, it clearly states that he never sold any Barmatic products within the United States, that he purchased products from Barmatic which were to be resold within the United States or

its territories or due to discriminatory prices, he was unable to recall that and that, to my mind, is the issue here. As to whether or not products were bought for resale, other than that we are wasting your time because Mr. Cohen's affidavit and my statement in open court admitted that we were unable to sell any Jarmatic products within the United States. They were either sold abroad or we are stuck with them in the warehouse because potential in the United States will buy them from us due to the prices we are compelled to charge. If that statement was clear on Friday, I don't know what else is. I have made it today. Today a total waste of time.

MR. POTALIVO: You were there on Friday and you heard Judge Platt's direction, and Judge Platt's direction was clear and unequivocal and he placed the burden on us as well as you, and that burden was to demonstrate whether or not Viney sold any of the products he purchased from Jarmatic within the United States and he was quite clear on it. He indicated that in the event you were unable to demonstrate any actual domestic sales that you would have to pay our attorneys' fees.

MR. TUCKER: I disagree with you. I will

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put it very simply. We stipulated in open court that there had been no resale of the product in the United States and that our only claim was that we had purchased products from Parmatic for resale within the United States and had been unable to complete that resale and there can be nothing clearer than Mr. Cohen's affidavit saying that we purchased products for resale and we were unable to sell them.

The Robinson-Patman acts requires only that products be bought for resale. If you are unable to resell them it's not void.

MR. ROMANO: We are getting to your testimony again. You know as well as anyone else you can cross-examine your witness.

MR. JAROSLAWICZ: I don't have to.

MR. ROMANO: If you think that is the issue in this case you are entitled to cross-examine your witness.

MR. JAROSLAWICZ: I have just put my statement on the record because I think you quickly avoided the issue. If you don't choose to examine, that's fine. Mr. Cohen can put in a supplementary affidavit listing exactly when I purchased the products for resale, who they were attempted to be resold to, and I am not

26

required to do it by deposition. I can do it by affidavit, which is perfectly proper which I intended to do. You have been put on notice. You have had an opportunity to examine. If you wish to do so, please do. If you don't wish to, it's your privilege.

MR. PAVANO: No further questions.

(Time noted: 1:30 p.m.)

* * * *

ISAAC L. COHEN

Sworn to and before me

this _____ day of

_____, 1977

_____

C E R T I F I C A T E

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

I, Maurice S. Davis, a Notary Public within and for the State of New York, do hereby certify that the foregoing deposition of ISAAC L. COHEN was taken before me on February 2, 1977:

That the said witness was duly sworn before the commencement of his testimony and that the within transcript is a true record of said testimony;

That I am not connected by blood or marriage with any of the parties herein nor interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 14 day of February, 1977.

MAURICE S. DAVIS

CABLE ADDRESS
FIMEXEL NEW YORK

FIMEX CORP. 127a
135 EILEEN WAY
SYOSSET (L. I.) N. Y. - 11791

(516) 364-2510
(516) 364-2511

February 21, 1975

Barmatic Products
13605 Union Ave
Cleveland Ohio 44120

Dear Mr. Kantor: Re: 5597A

Please enterour order for the following:

1500	416R
1500	416L
300	339L
300	338R
1000	140L

Packing: Your usual small steel strapped cartons.

Marks: FIMEX
OTO
ISTANBUL
5597/1&Up

Delivery: As soon as possible.

Please confirm.

Very truly yours,

FIMEX CORP.

ILC:gm

Marked for Ident
COHEN DEPOSITION
Ex. (4)
2/20/77

CABLE ADDRESS
FIMEXEL NEW YORK

FIMEX CORP.

128a

135 EILEEN WAY
SYOSSET (L. I.) N. Y. - 11791

TELEPHONES
(516)-364-2510
(516)-364-2511

Prepared for Exit. Copy Dep. Ex. (5A) 2/2/1/1972

BALANCE SHEET
AS AT DECEMBER 31, 1975

A S S E T S.

CURRENT ASSETS:		
CASH- European American Bank.	180,332.27	
Cash- Bankers Trust Company.	139,192.55	
Cash- Irving Trust Company.	134,215.70	$454,240.52
Export-Import Bank Bond.	80,215.00	80,215.00
Documents for collection against confirmed letters of credits.		121,318.55
Accounts receivable and outlays for customers		15,058.61
Merchandise inventory.		127,788.78
Packing supllies.		1.00
Accrued interest on Ex-Imp Bank bonds		2,121.25
TOTAL CURRENT ASSETS.		800,743.71
INVESTMENTS:		
1392 shares of Questor Corp.	8,246.89	
Titan Americas Corp's stock.	10,000.00	18,246.89
FIXED ASSETS:		
Furniture and fixture(less$6,553.03 depre)	1,607.50	
Automobiles(less $3,354.25 depreciation). .	4,269.86	5,877.36
OTHER ASSETS:		
Organization expenses.	238.07	
Deposits on lease and lighting.	3,156.25	3,394.32
TOTAL ASSETS.		$ 828,262.28

L I A B I L I T I E S AND C A P I T A L

LIABILITIES:		
Accounts payable.	114,188.69	
Customer's credit	32,634.38	
Accrued accounting fees	1,006.25	
Accrued Federal Unemployment Inur.	83.93	
Accrued New York State Franchise tax. . . .	1,123.98	
Deemed distribution to DISC stockholders. .	99,012.79	
TOTAL LIABILITIES		248,058.02
CAPITAL:		
Common stock - 500 shares.	50,000.00	
Retained earnings.	530,204.26	
TOTAL CAPITAL		580,204.26
TOTAL LIABILITIES AND CAPITAL.		$ 828,262.28

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SYOSSET (L. I.) N. Y. - 11791

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JB

BALANCE SHEET
AS AT DECEMBER 31, 1976

CURRENT ASSETS:		
Cash - Chemical Trust Company. . . .	193,127.44	
Cash - Hongkong American Bank	315.89	193,443.33
Export-Import Bank Bond.	30,215.00	
Documents for collection against confirmed letters of credit. . .	186,250.19	
Accounts receivables.	10,231.48	
Outlays for customers.	3,790.24	
Merchandise inventory.	163,963.90	
Packing supplies on hand	1.00	
Accrued interest on Exp.-Imp. Bank bond	2,121.25	394,571.08
TOTAL CURRENT ASSETS.		588,015.31
INVESTMENTS:		
1392 shares of Investor Corp.	8,246.89	
Titan Aviation Corp. stock	10,000.00	18,246.89
FIXED ASSETS:		
Furniture & fixtures (less $6,179.75 depreciation).	1,413.02	
Automobile (less $472.96 depreciation)	221.04	1,634.06
OTHER ASSETS:		
Organization expenses.	238.07	
Deposits on lease & lighting	3,156.25	3,394.32
TOTAL ASSETS.		$ 611,290.58

LIABILITIES AND CAPITAL

LIABILITIES:		
Accounts payable.	16,835.45	
Customer's credits.	112,670.78	
Accrued accounting expenses	800.00	
Accrued N.Y. State franchise tax	765.00	
Deemed distributions to FISC stockholder	1,132.82	130,099.10
CAPITAL:		
Common stock - 500 shares.	50,000.00	
Retained earnings.	431,191.48	
TOTAL CAPITAL.		481,191.48
TOTAL LIABILITIES AND CAPITAL.		$ 611,290.58

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(5C)

BALANCE SHEET
AS AT DECEMBER 31, 1973

CURRENT ASSETS:		
Cash in Trust Company	98,600.28	
Cash in National Bank	102,919.33	
Treasury Bank bond	80,215.00	
Accounts receivable net of reserve for doubtful accounts	190,022.34	
Due from affiliates	5,526.11	
Advances to suppliers	8,443.14	
Merchandise inventory	198,276.09	
Prepaid expenses on hand	1.00	
Accrued interest on Fr. Imp. Bank bond	2,121.25	
TOTAL CURRENT ASSETS		686,018.54
INVESTMENTS:		
Cash value of Sentry Corp.	8,246.89	
Cash value of Corp. stock	10,000.00	18,246.89
FIXED ASSETS:		
Furniture and fixtures less (5,932.86 depreciation)	1,385.21	
Automobile less (1,502.92 of depreciation)	442.08	1,827.29
OTHER ASSETS:		
Organization expenses	238.07	
Deposit on lease and lighting	3,156.25	3,394.32
TOTAL ASSETS		$ 709,487.04

LIABILITIES AND CAPITAL

LIABILITIES:		
Payroll taxes payable	73.08	
Accounts payable	209,426.43	
Customer's credit	24,535.70	
Accrued approximating fee	500.00	
Accrued N.Y. State franchise tax	712.00	
Accrued dividends payable, etc. children	29,086.22	
TOTAL LIABILITIES		$ 264,433.43
CAPITAL:		
Capital stock - 50 shares	50,000.00	
Paid-in surplus	395,053.61	
TOTAL CAPITAL		445,053.61
TOTAL LIABILITIES AND CAPITAL		$ 709,487.04

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BALANCE SHEET
AS AT DECEMBER 31, 1976

ASSETS

Cash - Chase Manhattan Bank	31,203.53	
Cash - Franklin National Bank	2,289.08	
Export-Import Bank - bond	10,000.00	
Accounts for collection against L/C	21,471.97	
Accounts receivable	42,229.57	
Merchandise inventory & orders in process	341,186.78	
Packing supplies	1.00	
Accrued interest on bond	831.39	
TOTAL CURRENT ASSETS		419,933.32
INVESTMENTS:		
13% [illegible] of Quaker Corp.	3,346.39	
Other marketable bonds, stocks	12,900.50	16,246.89
FIXED ASSETS:		
Furniture (less 5,777.07 depreciation)	1,437.02	
Autos [illegible] (less 1,[illegible] depreciation)	1,415.41	2,852.43
OTHER ASSETS:		
Organization expenses	831.07	
Deposits on lease & lighting	2,[illegible]	3,[illegible]
TOTAL ASSETS		$ 444,[illegible].95

LIABILITIES & CAPITAL

LIABILITIES:		
Payroll taxes payable	125.03	
Accounts payable	10,491.[illegible]	
Customer's credits	[illegible],[illegible]	
Accrued accounting fees	[illegible]	
Accrued NY State franchise tax	121.00	
Accrued distribution to [illegible]	[illegible]	
TOTAL LIABILITIES		28,409.56
CAPITAL:		
Common stock - [illegible]	[illegible]	
Retained earnings	[illegible]	
[illegible]		416,012.39
TOTAL [illegible]		$444,[illegible].95

FIMEX CORP. 132a
117 SWALM STREET
WESTBURY (L. I.)-N. Y.-11590
(516)-333-2720
(516)-333-2721

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BALANCE SHEET
AS AT JULY 30, 1974

ASSETS

CURRENT ASSETS:		
CASH - [illegible] NATIONAL BANK	$ 216,639.47	
CASH - [illegible] NATIONAL BANK	1,854.81	
Documents for collection (against L/C)	21,955.35	
Accounts receivables and outlays for account	10,048.91	
Merchandise inventory & orders in process	194,423.69	
Packing supplies on hand	1.00	
Due from [illegible], Inc. & co	174.00	
Prepaid [illegible] Automobile Tax	207.72	
TOTAL CURRENT ASSETS		$445,304.96
INVESTMENTS:		
1292 shares of Dexter Corp	8,246.89	
Citan Services Corp, stock	10,000.00	18,246.89
FIXED ASSETS:		
Furniture & fixtures (less depr. [illegible])	1,365.72	
Automobiles (less $2,01[illegible] depreciation)	2,860.63	4,226.35
OTHER ASSETS:		
Cash surrender value	238.07	
Deposits on leases, utility and [illegible]	6,325.00	6,563.07
TOTAL ASSETS		$ 474,341.27

LIABILITIES AND CAPITAL

LIABILITIES:		
Payroll taxes payable	$ 690.24	
Accounts payable and customers credits	42,027.62	
Federal income tax - balance unpaid for [illegible]	7,621.08	
Accrued accounting fees	800.00	
Accrued salaries	39,593.12	
Accrued expenses	112.32	
TOTAL LIABILITIES		$ 90,844.38
CAPITAL:		
Common stock	50,000.00	
Retained earnings	333,496.89	
TOTAL CAPITAL		383,496.89
TOTAL LIABILITIES AND CAPITAL		$474,341.27

[illegible] CORP.

WESTBURY NEW YORK

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117 SWALM STREET
WESTBURY (L. I.)-N. Y.-11590

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(516)-333-27

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BALANCE SHEET
AS OF [illegible]

ASSETS

CURRENT ASSETS:		
Cash - [illegible]		
Cash - [illegible] National Bank	$197,900.54	
Documents [illegible] Collection (against L/C)	2,136.40	
Accounts [illegible] and [illegible] Box Custom	24,774.94	
Outlays on [illegible] Income	23,378.54	
Merchandise [illegible]	120,224.91	
Packing [illegible]	110,600.94	
[illegible] Accounts	1.00	
		$458,017.07
INVESTMENTS:		
1392 Shares of Investor Corp.	8,246.89	
Titan Insurance Bond	10,000.00	18,246.89
FIXED ASSETS:		
Furniture and Fixtures (less depr. [illegible])	1,600.63	
Automobile (less depr. of 1,[illegible])	322.10	1,922.73
OTHER ASSETS:		
Organization expenses	238.07	
Deposits on [illegible]	2,325.00	2,563.07
TOTAL ASSETS		$480,749.76

LIABILITIES AND EQUITY

LIABILITIES:		
Payroll taxes payable	891.63	
Accounts payable - [illegible]	23,965.90	
Balance payable [illegible]	[illegible]	
Disability insurance [illegible]	[illegible]	
Federal [illegible] - current [illegible]	98.28	
NY Franchise [illegible] - current [illegible]	[illegible]	
Accrued [illegible] taxes	2,636.61	
Accrued salaries	1,200.00	
TOTAL LIABILITIES	45,204.40	
		135,576.47
CAPITAL:		
Common stock	20,000.00	
Retained [illegible]	[illegible]	
TOTAL CAPITAL		345,173.29
TOTAL [illegible] LIABILITIES		480,749.76

NEW YORK

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117 SWALM STREET

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(516)-333-2720
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134a

2/2/77 (56)

BALANCE SHEET
AS AT JUNE 30, 1976

ASSETS

CURRENT ASSETS:		
Cash - Chase Manhattan Bank	145,328.86	
Cash - Franklin National Bank	2,132.25	
Documents for collection against L/C	63,677.46	
Accounts receivable and outlays for cont.	27,300.81	
Outlays on orders in process	124,247.31	
Merchandise inventory	56,046.30	
Packing supplies on hand	1.00	
TOTAL CURRENT ASSETS		418,733.99
INVESTMENTS:		
1392 shares of Questor Corp.	8,246.89	
Titan American Corp'stock	10,000.00	18,246.89
FIXED ASSETS:		
Furniture and fixtures (less depre. 4,163.25)	1,410.99	
Automobile (less depre. $966.24)	966.26	2,377.25
OTHER ASSETS:		
Organization expenses	238.07	
Deposits on lighting and cont.	2,325.00	2,563.07
TOTAL ASSETS		441,921.20

LIABILITIES AND CAPITAL

LIABILITIES:		
Payroll taxes payable	930.99	
Accounts payable and customers credit	86,188.12	
Balance pension fund contribution	418.00	
Disability insurance payable	98.28	
Federal income tax- current year	18,765.05	
NY Franchise tax - current year (balance)	1,033.51	
Accued accounting fees	1,250.00	
Accued salaries	30,408.20	
TOTAL LIABILITIES		139,092.15
CAPITAL:		
Common stock	50,000.00	
Retained earnings	252,829.05	
TOTAL CAPITAL		302,829.05
TOTAL LIABILITIES AND CAPITAL		441,921.20

FIMEX CORP.

FIMEXEL
WESTBURY NEW YORK

FIMEX CORP.

135a

117 SWALM STREET
WESTBURY (L. I.)-N. Y.-11590

TELEPHONES
(516)-333-2720
(516)-333-2721

BALANCE SHEET

AS AT [illegible], 1968

ASSETS

CURRENT ASSETS:		
Cash - Chase Manhattan Bank	[illegible]	
Cash - Chase Manhattan Bank (special deposit)	[illegible]	
Cash - Franklin National Bank	[illegible]	
Doubtful Sec. and Leases receivable A/C	[illegible]	
Merchandise inventory	[illegible]	
Accounts receivable and [illegible]	[illegible]	
Deposits for [illegible]	[illegible]	
Factory supplies on hand	[illegible]	
Total current assets	1.00	343,032.92
INVESTMENTS:		
1968 [illegible]	[illegible]	
Balance with [illegible]	348.00	
Time deposits [illegible]	[illegible]	18,334.89
FIXED ASSETS:		
Furniture & Fixtures (less [illegible] depr.)	1,066.28	
Automobile (less $[illegible] depreciation)	[illegible]	2,676.70
OTHER ASSETS:		
Organization expense	221.07	
Deposits on lighting [illegible]	2,303.00	
New York State and N.Y.City taxes prepaid	[illegible]	[illegible]
TOTAL ASSETS		369,692.21

LIABILITIES AND CAPITAL

LIABILITIES:		
Payroll taxes payable	206.07	
Accounts payable and [illegible]	[illegible]	
Balance payable for [illegible]	[illegible]	
Disability insurance payable	97.16	
Federal Income tax [illegible]	[illegible]	
Accrued [illegible]	[illegible]	
Due to [illegible]	[illegible]	
TOTAL LIABILITIES		97,560.35
CAPITAL:		
Common stock	[illegible]	
[illegible]	[illegible]	
TOTAL CAPITAL		[illegible]
TOTAL LIABILITIES AND CAPITAL		369,692.21

TELEPHONES
CORTLANDT 7-320
320
320

FIMEX CORP.

136a

261 BROADWAY
NEW YORK 7, N. Y.

2/7/57
57

BALANCE SHEET

AS AT JUNE 30, 1957

ASSETS.

CURRENT ASSETS:		
Cash - Chase Manhattan Bank	$ 111,709.67	
Documents for collection against L/C.	26,247.12	
Accounts receivables and outlays for customers	7,272.66	
Merchandise inventory	22,087.45	
Outlays on orders in process	174,078.24	
Packing supplies on hand	1.00	
Other assets - stamps	8,246.89	
TOTAL CURRENT ASSETS		$ 349,503.03
FIXED ASSETS:		
Furniture and fixtures (less $5,528.21 deprec.)		832.60
OTHER ASSETS:		
Organization expenses		238.07
TOTAL ASSETS		$ 350,573.70

LIABILITIES & CAPITAL

LIABILITIES:		
Payroll taxes payable	589.09	
Accounts payable and customer's credit	21,379.84	
Federal, State and City taxes payable	26,946.63	
Other accrued expenses	58,327.03	
TOTAL LIABILITIES		$ 87,245.59
CAPITAL:		
Common stock and retained earnings		263,328.11
TOTAL LIABILITIES AND CAPITAL		$ 350,573.70

FIMEX CORP.

[illegible]

CABLE ADDRESS
FIMEXEL

TELEPHONES
CORTLANDT 7-3201
3202
3203

137a

FIMEX CORP.

261 BROADWAY
NEW YORK 7, N. Y.

BALANCE SHEET

AS AT JUNE 30, 1966

ASSETS.

CURRENT ASSETS:		
Cash - Chase Manhattan Bank	147,447.19	
Documents for collection against L/C	10,750.76	
Accounts receivable and outlays for customers	14,145.67	
Merchandise inventory	9,287.97	
Outlays on orders in process, against L/C	126,577.27	
Packing supplies on hand	1.00	
Other assets - stocks	8,246.89	
TOTAL CURRENT ASSETS		316,456.7
FIXED ASSETS:		
Furniture and fixtures (less $3,401.35 depreciation)		751.46
OTHER ASSETS:		
Organization expenses		238.07
TOTAL ASSETS		$317,446.28

LIABILITIES & CAPITAL

LIABILITIES:		
Payroll taxes payable	957.53	
Accounts payable and customer's credit	44,306.96	
Federal and New York taxes payable	13,818.95	
Payroll and other accrued expenses	24,761.22	
TOTAL LIABILITIES		83,844.66
CAPITAL:		
Common stock	50,000.00	
Retained earnings	183,601.62	
TOTAL CAPITAL		233,601.6
TOTAL LIABILITIES AND CAPITAL		$ 317,446.2

FIMEX CORP.

CABLE ADDRESS
FIMEXEL
WESTBURY NEW YORK

FIMEX CORP. 138a
117 SWALM STREET
WESTBURY (L. I.)-N. Y.-11590

TELEPHONES
(516)-333-2720
(516)-333-2721

NEW ADDRESS
135 EILEEN WAY
SYOSSET, N. Y. 11791

March 16,1972

INTERNAL REVENUE SERVICE CENTER
ANDOVER, MASS, 01812

Ref: ELECTION TO BE TREATED AS A D.I.S.C.

Gentlemen:

Persuant to the new law, we request to be treated as a DISC. We are submitting hereunder the required information.

NAME: FIMEX CORP
135 Eileen Way
SYOSSET, NY-11791

EMPLOYER IDENTIF: 13 - 5543681

TAXABLE YEAR: Jan. 1, 1972

SHARES: 500 shares were issued and are outstanding

SHAREHOLDERS: 250 shares are held by MOISE COHEN.
250 shares are held by ISAAC L.COHEN

INCORPORATION DATE: July 2, 1947

STATEMENT OF CONSENT: Attached are two statements of consent, signed by the above two shareholders.

Very truly yours

FIMEX CORP.

ILC/mm

I.L.COHEN
Vice President.

cc to: COMMISSIONER OF INTERNAL REVENUE(Att: ACTS:A:P)
Washington, DC -20224

Mailed from Internal Center Department
Tax - (1) 11/9/74

1. Order no. 5579A was placed by Fimex on February 21, 1975.

2. The items were shipped by Barmatic on February 28, 1975, consisting of:

1500	416 R
1500	416 L
300	339 L
300	339 R
1000	140 L

3. This material was placed in our warehouse and sales were made as follows:

a. Our shipping invoice 5767G (3/28/75)

1000	416 R
1000	416 L
300	339 L
300	339 R
280	140 L

b. invoice 5976D (5/10/76)

500	416 R
500	416 L
180	140 L

c. On December 31, 1976, we still had in stock

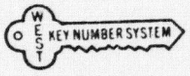
540	140 L

EXHIBIT 2

DECISION OF THE COURT DATED APRIL 14, 1977 AS REPORTED IN 429 F.Supp. 978 (E.D.N.Y. 1977) (pp. 140a-143a)

sitated by Texas Instruments' retention of attorneys based in Washington, D. C. The defense attorney's manner of litigating the instant case seems reasonable to the court from its reading of Wayne Bishop's affidavit; yet Goff should not have to pay for Texas Instruments' retaining the best and most scrupulous out-of-state counsel that money can buy. The court has, rather, made an award based on the fees that a reasonably prudent local attorney proceeding to dispose of the case by preliminary motion might have charged the defendant.

For the reasons stated in this ORDER, the defendant will be awarded $2500 in attorney's fees. Defendant is instructed to prepare a judgment within 10 days of entry of this ORDER.



FIMEX CORP., Plaintiff,

v.

BARMATIC PRODUCTS CO., Defendant.

No. 76 C 2021.

United States District Court,
E. D. New York.

April 14, 1977.

United States distributor brought action against automobile parts manufacturer for discriminatory pricing in violation of Robinson-Patman Act with respect to parts sold by manufacturer to distributor which exported all of them. The District Court, Platt, J., held that the Robinson-Patman Act did not apply with respect to goods for resale abroad, that the proper test in applying Act was the objective standard of where the goods were resold, and that even if the test were the seller's or buyer's intent affidavit of plaintiff distributor was insufficient to raise genuine issue of fact for trial.

Summary judgment granted for defendant.

1. Trade Regulation ⇐911

If all sales by parts manufacturer to United States distributor were for purpose of resale abroad, Robinson-Patman Act did not apply. Clayton Act, § 2(a), 15 U.S.C.A. § 13(a).

2. Trade Regulation ⇐911

Under provision of Robinson-Patman Act relating to prices for commodities sold for use, consumption or resale within United States, meaning of phrase "sold for * * * resale within the United States." refers to the objective standard of where the goods were resold rather than the buyer's or seller's intent. Clayton Act, § 2(a), 15 U.S.C.A. § 13(a).

See publication Words and Phrases for other judicial constructions and definitions.

3. Trade Regulation ⇐932

Even if seller's or buyer's intent was proper test to determinate applicability of Robinson-Patman Act provision relating to commodities sold for "use, consumption, or resale within the United States", affidavit of plaintiff United States distributor, suing manufacturer for violation of the Act with respect to automobile parts sold to distributor, which exported all of them, was insufficient to show a genuine issue of fact for trial. Clayton Act, § 2(a), 15 U.S.C.A. § 13(a); Fed.Rules Civ.Proc. rule 56(f), 28 U.S.C.A.

Julien & Schlesinger, P.C. by David Jaroslawicz, New York City, for plaintiff.

Barnes, Richardson & Colburn, New York City by Edward F. Christopher, New York City, of counsel, and Arent, Fox, Kintner,

award of attorney's fees. In sum, the court is withholding an award of attorney's fees for discovery not because the defendant does not logically deserve them but for countervailing policy considerations of judicial economy.

Plotkin & Kahn, Washington, D.C. by Salvatore A. Romano, Washington, D.C., of counsel, for defendant.

MEMORANDUM AND ORDER

PLATT, District Judge.

Fimex Corporation ("Fimex") is suing Barmatic Products Company ("Barmatic") for discriminatory pricing in violation of the Robinson-Patman Act, 15 U.S.C. § 13(a).

The defendant Barmatic has moved pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment or, in the alternative, pursuant to Rule 12(b)(6) to dismiss the complaint on the grounds that the Robinson-Patman Act does not cover goods sold for export and that all the goods the defendant sold to the plaintiff were for export.

Barmatic is an Ohio corporation which manufactures automobile parts. Fimex is a New York corporation which distributes automobile parts in the United States and abroad, and which, since about 1960, has purchased some of its parts from Barmatic. The plaintiff alleges that the defendant charged him a higher price than the defendant charged other customers purchasing the same products. The defendant alleges that all the sales to the plaintiff were sold for export.

I

[1] The first issue raised by this case is whether the Robinson-Patman Act covers goods sold for export. That Act states (15 U.S.C. § 13(a)):

> "It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States . . ."

That statute clearly states that to be covered the commodities must be sold "for use, consumption, or resale within the United States". Thus, if all the sales between the defendant and the plaintiff were for resale abroad, this statute is inapplicable.

The plaintiff argues that "the Robinson-Patman Act prohibits discrimination in prices between persons within the United States even if those persons purchased goods for export."

On this point we quote Congressman Patman, co-author of the Act, in his book entitled *The Robinson-Patman Act*, at p. 208 (1938), (quoted in *Baysoy v. Jessop Steel Co.*, 90 F.Supp. 303, 305 (W.D.Pa.1950)):

> "Therefore, in applying the Act to export sales, it is evident that no limit or regulation of price discrimination in such sales is intended, unless goods involved in such transactions are resold for use, consumption, or resale in any place under the jurisdiction of the United States. *It is likewise apparent that the parties to any sales transaction, regardless of where the parties are located,* are not subject to the price-discrimination provisions of the Act, unless such goods are sold for resale in, or are to be used or consumed in, any place under the jurisdiction of the United States." (Emphasis added)

That quotation makes it clear that the focus of the Act is on where the goods are going, not on where the parties involved are located. This conclusion is supported by the leading case interpreting this section, *Zenith Radio Corp. v. Matsushita Electric Industrial Co., Ltd.*, 402 F.Supp. 244 (E.D.Pa.), *pet. denied*, 521 F.2d 1399 (3d Cir. 1975). In that case the defendant was selling televisions at one price in Japan and at another in the United States. The Court held (402 F.Supp. at 248):

> "The 'use, consumption, or resale' clause makes it equally clear that the commodities involved must eventually reach the United States. Hence, no cause of action arises under the Act unless both commodities involved in the alleged price discrimination are 'sold for use, consumption, or resale within the United States.' That, of course, is not the case here, for

one 'leg' of the price discrimination alleged by plaintiffs involves commodities that are 'sold for use, consumption, or resale,' not within the United States, but within a foreign country, Japan. I conclude therefore that on its face the statute does not reach the transactions alleged here."

We hold, therefore, that if all the sales by Barmatic to Fimex were for resale abroad, the Robinson-Patman Act does not apply regardless of the location of the plaintiff or the defendant.

II

The second issue in this case is, were all the Barmatic sales to Fimex for resale abroad and is there a genuine issue of fact on that question? As the original affidavits did not adequately address that question, this Court ordered the deposition of one of the officers of the plaintiff, Mr. Isaac Cohen, in order to fully develop the factual record.

At Mr. Cohen's deposition it was revealed that the only evidence the plaintiff had of sales from Barmatic to Fimex were twenty-six folders which contained invoices, bills of lading and purchase orders. (Transcript pp. 30–33).

Furthermore, Mr. Cohen made it clear in the following exchange that none of Barmatic sales to Fimex were sold in the United States. (Transcript p. 52).

Q Getting back to those 26 folders, were you able to find any evidence in your records of a sale by Fimex of products purchased from Barmatic to a customer in the United States?

A No, sir.

Q Did you look hard for it?

A Yes, sir.

Q You spent a great deal of time trying to find one?

A I spent days.

Q You couldn't find one?

A No, sir.

Q So as best as you can determine, based on your search, none of the products that you purchased from Barmatic was sold to customers in the United States; is that correct?

A No, sir.

Q No, sir, what?

A No, none of the products were sold in the United States.

Q They were all exported?

A Or else they are still in my warehouse.

Further, the plaintiff in his Supplemental Affidavit in Opposition at p. 4 concedes that no actual resales of Barmatic products were made in the United States, but argues that this fact is not conclusive here. It is the plaintiff's position that the record does not establish that at the time the plaintiff purchased the automobile parts from the defendant these parts were intended for export. In other words, the plaintiff argues that he would have sold here and in fact tried to sell here but failed because the defendant's prices were inflated, and therefore was forced to resell the goods abroad.

This argument raises the question of the meaning of words "sold for . . . resale within the United States". The Supreme Court has noted that "precision of expression is not an outstanding characteristic of the Robinson-Patman Act," *Automatic Canteen Co. of America v. F.T.C.*, 346 U.S. 61, 65, 73 S.Ct. 1007, 1020, 97 L.Ed. 1454 (1953), and in conformity with that the above quoted section of the Act lends itself to at least three possible interpretations. First, that section could mean that the seller's intent is controlling. In other words, did the seller intend the goods for resale within the United States? Second, the focus of the Act could be on the buyer's intent, and third, the focus of the Act could be the objective standard of where the goods were in fact resold.

In *Zenith Radio, supra*, at 248, the Court seemed to indicate that the third test is correct when it said that the "'use, consumption, or resale' clause makes it equally clear that the commodities involved must eventually reach the United States."

In any case, the fact that the plaintiff and defendant engaged in a series of trans-

actions over a number of years and all the goods were consistently exported is strong evidence that both sides intended the goods for export. The only exception to that statement is that the plaintiff does have 500 tie rods from the defendant still in its warehouse. However, the purchase order identified by Mr. Cohen covering those tie rods (Cohen Deposition Exhibit 4) states that Fimex wanted the order marked "FIMEX OTO ISTANBUL", and so as to those goods Barmatic cannot be faulted for assuming the goods were for export. As to the other goods, no purchase orders were provided, but there is no dispute that all other Barmatic sales were exported.

[2] Therefore, in order for this plaintiff to have a cause of action we must find that the test under the Act is the buyer's intent, and that in this case Fimex bought some Barmatic products with the (apparently undisclosed) original intent of selling them in the United States, but on failing in that, sold them abroad.

If a buyer's intent test, particularly an undisclosed one, were to be read into the Act, it would be an easy matter for every buyer which (as has been the case with the plaintiff) traditionally purchased for export to place a seller in jeopardy of a suit such as this by submitting on occasion orders to a seller for items which the buyer subsequently claims were for the domestic market. In short, this would make the Act a real trap for the unwary and subject sellers to liability which might only be said to be clearly undeserved. In simple fairness this Court does not feel that any such inequitable result was ever intended and hence concludes that no such test is applicable.

Assuming *arguendo*, however, that another court might disagree, this Court is convinced that the facts in this case do not warrant its application here.

The only evidence the plaintiff presents in support of this somewhat tenuous position is Mr. Cohen's original affidavit where he states that he did purchase tie-rods for resale in the United States and did try to resell tie-rods in the United States. In this connection the mere assertion by an officer of the plaintiff of attempts to resell domestically was clearly insufficient on this motion.

[3] Therefore, in order to fully develop the facts in conformity with Rule 56(f) of the Federal Rules of Civil Procedure, this Court ordered the deposition of Mr. Cohen. At that deposition no questions were asked regarding any attempts to resell Barmatic products in the United States. The plaintiff's attorney at the deposition argued that it was the defendant's obligation to ask such questions, but when the plaintiff raised this point at oral argument, this Court offered the plaintiff a *second* opportunity to depose Mr. Cohen and develop any relevant facts. The plaintiff refused this offer, and so this Court must decide this motion on the record before it.

Therefore, on this record we hold that if the correct test under the Robinson-Patman Act is the objective standard of where the goods were actually resold, then as the plaintiff has conceded that none of the goods were resold here, summary judgment must be granted.

Alternatively, the correct test may be that the seller can rely on where the buyer customarily resells his goods absent some express notice given to the contrary with respect to particular purchases. If this is the test, then as Fimex's custom was clearly to resell Barmatic products abroad where all those products were resold, and as Fimex has produced no evidence of any notice to Barmatic that it intended to resell any particular order here, then summary judgment must again be granted.

The third possible test is that buyer's intent governs and that the buyer does not have to communicate such intent to the seller. We have stated that such a test would be unfair and should not be read into the Act, but even assuming that it is applicable, we hold that the plaintiff has not presented specific facts showing that there is a genuine issue of fact for trial.

The defendant's motion for summary judgment is granted with costs.

SO ORDERED.

JUDGMENT (Filed April 15, 1977)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

FIMEX CORP.,

Plaintiff,

-against-

BARMATIC PRODUCTS CO.,

Defendant.

----------x

P.M. .....

JUDGMENT
M'FILMED

76 C 2021

A memorandum and order of Honorable Thomas C. Platt, United States District Judge, having been filed on April 15, 1977, granting the defendant's motion for summary judgment with costs, it is

ORDERED and ADJUDGED that the plaintiff take nothing of the defendant and that the defendant's motion for summary judgment is granted with costs.

Dated: Brooklyn, New York
April 14, 1977

Leon Orgel
Clerk

A 202 Affidavit of Personal Service of Papers

LUTZ APPELLATE PRINTERS, INC.

COURT OF APPEALS
SECOND CIRCUIT

FIMEX CORP., Plaintiff-Appellant - against - BARMATIC PRODUCTS CO., Defendant-Appellee	*Index No.* *Affidavit of Personal Service*

STATE OF NEW YORK, COUNTY OF *ss.:*

I, Kevin E. Thomas, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 1515 Macombs Road, Bronx, N.Y. 10452,

That on the 12th *day of* July *19* 77 *at* 475 Paek Avenue New York, N.Y.

deponent served the annexed Appendix *upon* Barnes Richardson & Colburn

the *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* *herein,*

Sworn to before me, this 12th *day of* July *19* 77

Kevin E. Thomas
Print name beneath signature
KEVIN E. THOMAS

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31 0418950
Qualified in New York County
Commission Expires March 30, 1979

A 201 Affidavit of Service by Mail

LUTZ APPELLATE PRINTERS, INC.

COURT OF APPEALS
SECOND CIRCUIT

FIMEX CORp.,
Plaintiff-Appellant

- against -

BARMATIC PRODUCTS CO.,
Defendant-Appellee

Index No.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF ss.:

I, Robert Martinez being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 1165 Morris Avenue; Bronx, New York

That on the 12th day of July 19 77, deponent served the annexed

Appendix upon Arent Fox Kister Flothin & Kahn, Esqs. attorney(s) for

in this action, at 1815 H. St. N.W.
Washington, D.C.

the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.

Sworn to before me, this 12th day of July 19 77.

Robert Martinez

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31 0418950
Qualified in New York County
Commission Expires March 30, 1979